

**THE INFLUENCE OF PROCUREMENT PRACTICES ON SERVICE DELIVERY:
AN ANALYSIS OF GOVERNMENT LEGISLATION – SERVICE DELIVERY
RELATIONSHIPS IN SOUTH AFRICA**

by

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DECLARATION

By submitting this dissertation electronically, I declare that the entirety of the work contained therein is my own original work, that I am the authorship owner thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

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ABSTRACT

The question that remains unanswered among public procurement scholars is whether public procurement prescripts and their implementation hinder accelerated service delivery. The public's perception is that public procurement legislation is fragmented, rigid and difficult to implement. Perception further suggests adverse relationships between public procurement, fraud, corruption and service delivery.

To ensure a better understanding of the phenomenon being studied, relevant literature was explored. Public sector procurement was defined as a process that involves hiring, purchasing or acquiring goods, services and construction works through contractual means in order to render efficient service delivery. It was found that, since public sector procurement operates within a tight political system, there is some level of interference with procurement operations. The relationship between public procurement and service delivery was thoroughly discussed, where service delivery was defined in different contexts and the researcher concluded that, although definitions were given in different contexts, "community well-being" was the epicentre of service delivery. The above relationship was supported by recent statistics on service delivery protests and the Auditor-General's audit outcomes. An important take-away from this segment was that clean audits are meaningless if there is no service delivery improvement.

Literature revealed that new public procurement reforms, including public procurement legislative consolidation are urgently needed. The reforms also included public procurement professionalisation, the adoption of e-government and e-procurement technologies. A distinction was made between procurement and supply chain management, while public and private sector procurement were also differentiated. Some similarities were noted, in that both private sector and public sector have a single mutual goal – to get value for money throughout the procurement process.

The researcher discovered that the public sector does not perform supply chain management, it only specialises in one or two elements of supply chain management. Leenders and Fearon (2004:10) argue that supply chain management is a systematic process that facilitates the entire synergy between raw materials, services and information from the research and development (R&D) stage through to the end consumer receiving a finished product. The public sector rarely does R&D, nor does it develop, manufacture and market products and therefore only performs a few supply chain management elements, mainly procurement and some logistics management for selected government institutions. It is therefore the researcher's submission and contribution that a single organisation cannot perform the entire supply chain management process as each specialises in either one or a few supply chain management elements.

The study discussed how public sector procurement could learn from some of the private sector good practices, because communication, product flexibility and innovation between government institutions and suppliers is very limited due to some prohibiting prescripts. Types of corruption in public procurement and its effect on service delivery was discussed alongside measures to combat it. The researcher introduced the rule of law principles and good governance with its three key role players as new measures to curb public procurement corruption.

South Africa does not have a public procurement act passed by parliament to specifically address public procurement operations. South Africa has also not adopted e-government and e-procurement technologies in public procurement operations. Furthermore, South Africa does not have an independent and impartial public procurement regulator; therefore, the researcher's observations compelled the commissioning of case studies on three African countries, namely Kenya, Zambia and Zimbabwe which have operational public procurement acts, have adopted public procurement modernisation and also have operational public procurement regulators. The three case studies revealed three main lessons for South Africa on how the three countries managed, firstly, to enact and implement specialised public procurement acts years ago. Secondly, how they managed to promulgate and implement e-government and e-procurement technology policies. The third lesson was on establishing a procurement regulator to independently and impartially oversee public procurement in their countries.

In an effort to answer the main unanswered question above, both qualitative and quantitative research methods were applied (using a hybrid research method) to ensure triangulation. Quantitative methods have a weakness as they do not fully understand the context in which respondents provide their responses, while qualitative methods often “push” the researcher's ideas, which can be regarded as subjective. For these reasons the hybrid research method was chosen to make sure that the strengths of qualitative methods counterbalance the shortcomings of quantitative methods and vice versa.

The study population was made up of public procurement employees, ranging from practitioners to chief directors in five major service delivery departments (provincial and national) of Health, Public Works, Human Settlements, Social Development and Transport, and one large municipality in each of the nine provinces. Since it is not possible to interview or survey the entire relevant population; the population sample was confined to 352 procurement employees. Survey questionnaires, interview guides and document reviews were utilised to collect data. Questionnaire data was analysed using SPSS, e-Views 9.5 and Microsoft Excel. All responses were graphically presented as per the questionnaire sequence. Qualitative data was analysed thoroughly, leading to the extrapolation of common themes that informed the thematic analysis in order to match commonalities in respondents' opinions.

The researcher ensured the validity, credibility, and high standards of data quality throughout the study. In this study, various validity measures were used to evaluate the respondents' responses and opinions regarding service delivery and public procurement legislation. Construct validity measures tested how well the results correlated to the reviewed theories and study hypothesis.

The study results were interpreted against the background of the main hypothesis, which suggested that “public procurement legislative practices have a negative impact on service delivery”, which was confirmed by the Chapter 6 results. The study discovered that the fragmentation of public procurement legislation delays service delivery because there is an absence of central legislative accountability to monitor procurement performance. Qualitative respondents also agreed and stated that “some of the prescripts are issued without consultation with public procurement specialists or practitioners in national and provincial departments, public institutions and municipalities”. Furthermore, the best procurement practices and procedures are not developed and shared across all government institutions.

However, different views from senior Office of the Chief Procurement Officer (OCPO) officials indicated that service delivery delays are not always due to fragmented legislation, but sometimes due to poor procurement planning, non-compliance and deliberate manipulation of public procurement prescripts. A common reason given by respondents was that “different decisions are taken in different places and levels amounting to unnecessary government bureaucracy.” The study revealed an element of political interference in public procurement, this is seen as delaying service delivery.

The study recommended the establishment of a specialised National Bid Appeals Tribunal (operated regionally) with Chapter 9 institution powers, this is urgently needed to reduce litigation costs for both government and service providers. Although perceptions suggested that OCPO does not consider recent court judgments when issuing instruction notes; the study did not find any substantial scientific evidence to support such a notion with a combined 52 percent of respondents disagreeing. The National Treasury ought to establish a unit under OCPO to focus on the analysis of public procurement-related court judgments and advise lawmakers accordingly. The study also recommended a review of some legislation that hinders the full adoption of strategic sourcing in government procurement. The study is meant to assist National Treasury in properly managing wide consultation with all procurement specialists in all three spheres of government and by carefully drafting, consulting, analysing court judgments, promulgating and guiding the implementation of public procurement reforms in South Africa.

In light of the above summary of recommendations, an efficient and effective *Procurement practices versus service delivery normative model* has been developed and proposed to achieve some of the above recommendations.

OPSOMMING

Die vraag wat onder openbare verkrygings geleerdes bly, is of openbare voorskrifvoorskrifte en die implementering daarvan versnelde dienslewering belemmer. Die publiek se persepsie is dat wetgewing oor openbare verkrygings gefragmenteer, styf en moeilik is om te implementeer. Persepsie dui verder op ongunstige verhoudings tussen openbare verkryging, bedrog, korrupsie en dienslewering.

Om 'n beter begrip te verkry van die verskynsel wat bestudeer word, is relevante literatuur ondersoek. Openbare sektor verkryging is gedefinieer as 'n proses wat behels die huur, aankoop of verkryging van goedere, dienste en konstruksiewerke deur middel van kontraktuele middele ten einde doeltreffende dienslewering te lewer. Daar is bevind dat sedert die verkryging van openbare sektor binne 'n stywe politieke stelsel handel, daar 'n mate van inmenging met verkrygingsbedrywighede is. Die verhouding tussen openbare verkryging en dienslewering is deeglik bespreek, waar dienslewering in verskillende kontekste gedefinieer is en die navorser het bevind dat, hoewel definisies in verskillende kontekste gegee is, "gemeenskapswelstand" die episentrum van dienslewering was. Bogenoemde verhouding is ondersteun deur onlangse statistieke oor diensleweringsoptimalisering en die Ouditeur-Generaal se audituitkomst. Die belangrike wegneem van hierdie segment was dat skoon audits betekenisloos is as daar geen verbetering in dienslewering is nie.

Literatuur het aan die lig gebring dat nuwe hervormings van openbare verkrygings, insluitend die wetgewende konsolidasie van openbare verkrygings, dringend nodig is. Die hervormings het ook die professionalisering van openbare verkrygings ingesluit, die aanneming van e-regering en e-verkryging tegnologie. Daar is onderskeid gemaak tussen verkryging en voorsieningskanaalbestuur, terwyl die verkryging van openbare en private sektor ook gedifferensieer is. Sommige ooreenkomste is opgemerk, aangesien beide die privaatsektor en die openbare sektor een onderlinge doel het - om waarde vir geld te verkry gedurende die verkrygingsproses.

Die navorser het ontdek dat die openbare sektor nie supply chain management uitvoer nie, maar slegs spesialiseer in een of twee elemente van die voorsieningskanaalbestuur. Leenders en Fearon (2004: 10) voer aan dat die voorsieningskettingbestuur 'n sistematiese proses is wat die hele sinergie tussen grondstowwe, dienste en inligting van die R&D-stadium fasiliteer tot die eindverbruiker wat 'n finale produk ontvang. Die openbare sektor doen selde R&D en ontwikkel nie, vervaardig en bemark produkte nie en voer dus slegs enkele voorsieningskanaalbestuurselemente, hoofsaaklik verkryging en sommige logistieke bestuur vir geselekteerde regeringsinstellings. Dit is dus die navorser se voorlegging en bydrae dat enige organisasie nie die hele bestuurskettingbestuursproses mag uitvoer nie, aangesien elkeen spesialiseer in een of enkele voorsieningskanaalbestuurselemente.

Die studie het bespreek hoe openbare sektor-verkryging van sommige van die goeie praktyke van die privaat sektor kan leer, aangesien kommunikasie, produktebuijsaamheid en innovasie tussen regeringsinstansies en verskaffers baie beperk is weens sommige voorgeskrewe voorskrifte. Die vorme van korrupsie in openbare verkrygings en die gevolge daarvan vir dienslewering is saam met maatreëls om dit te bekamp bespreek. Die navorser het die beginsels van regsbeginnels en goeie bestuur ingestel met sy drie sleutelrolspelers as nuwe maatreëls om korrupsie op die gebied van openbare verkryging te bekamp.

Suid-Afrika het nie 'n wet op openbare verkrygings deur die parlement aangeneem om spesifiek die verkryging van openbare verkrygings aan te spreek nie. Suid-Afrika het ook nie e-regering- en e-verkrygingstegnologieë in openbare verkrygingsbedrywighede aangeneem nie. Verder het Suid-Afrika nie 'n onafhanklike en onpartydige regeringsreguleerder nie; Daarom het die navorser se waarnemings gedwing om gevallestudies in drie Afrika-lande, naamlik Kenia, Zambië en Zimbabwe, in werking te stel wat operasionele openbare aankoopprosedures aangeaan het, die modernisering van die openbare verkryging aangeneem en ook operasionele regerings vir die verkryging van regerings. Die drie gevallestudies het drie hooflesse vir Suid-Afrika geopenbaar oor hoe die drie lande in die eerste plek bestuur het om gespesialiseerde owerheidsverkryging jaarliks te implementeer en te implementeer. Tweedens, hoe hulle daarin slaag om e-regering en e-verkryging tegnologie beleid te promulgeer en te implementeer. Die derde les was om die verkrygingsreguleerder selfstandig te vestig en onpartydig toesig te hou oor openbare verkrygings in hul lande.

In 'n poging om die hoof onbeantwoorde vraag hierbo te beantwoord, is beide kwalitatiewe en kwantitatiewe navorsingsmetodes toegepas (hibriede navorsingsmetode) om triangulasie te verseker. Kwantitatiewe metodes het 'n swakheid omdat hulle nie die konteks waarin respondente hul antwoorde volledig verstaan nie, terwyl kwalitatiewe metodes die navorser se idees dikwels "stoot", wat as subjektief beskou kan word. Om hierdie redes is die hibriednavorsingsmetode gekies om seker te maak dat die sterk punte van kwalitatiewe metodes die tekortkominge van kwantitatiewe metodes en omgekeerd teenwerk.

Die studiepopulasie bestaan uit staatsverkrygingswerkers, wat wissel van praktisyns tot hoofdirekteure in vyf hoofdienslewingsdepartemente (provinsiale en nasionale) van Gesondheid, Openbare Werke, Menslike Nedersettings, Maatskaplike Ontwikkeling en Vervoer, en een groot munisipaliteit in elk van die nege provinsies. Aangesien dit nie moontlik is om die hele relevante bevolking te ondervra of te ondersoek nie; Die bevolkingsmonster was beperk tot 352 verkrygingswerknemers. Opname vraelyste, onderhoudsgidse en dokumentresensies is gebruik om data te versamel. Vraelys data is geanaliseer met behulp van SPSS, e-Views 9.5 en Microsoft Excel. Alle antwoorde is grafies voorgestel volgens die vraelysreeks. Kwalitatiewe data is deeglik ontleed, wat gelei het tot die ekstrapolasie van algemene temas wat die tematiese analise ingelig het om gemeenskaplike ooreenkomste in respondente se menings te pas.

Die navorser het geldigheid, geloofwaardigheid en hoë standaard van data kwaliteit verseker gedurende die studie. In hierdie studie is verskeie geldigheidsmaatreëls gebruik om die respondente se antwoorde en opinies oor dienslewering en wetgewing oor openbare verkryging te evalueer. Konstrueer geldigheidsmaatreëls getoets hoe goed die resultate korreleer met die hersiene teorieë en studiehypotese.

Die studie resultate is geïnterpreteer teen die agtergrond van die hoofhipotese, wat voorgestel het dat "wetgewende praktyke van openbare verkryging 'n negatiewe uitwerking op dienslewering het", wat deur Hoofstuk 6 resultate bevestig is. Die studie het ontdek dat die fragmentering van wetgewing oor openbare verkrygings dienslewering vertraag omdat daar nie 'n sentrale wetgewende aanspreeklikheid is om aankope prestasie te monitor nie. Kwalitatiewe respondente het ook ingestem dat "sommige van die voorskrifte uitgereik word sonder konsultasie met openbare verkrygingspesialiste of praktisyns in nasionale en provinsiale departemente, openbare instellings en

munisipaliteite". Verder word die beste verkrygingspraktyke en -prosedures nie ontwikkel en oor alle regeringsinstellings gedeel nie.

Verskillende sienings van senior amptenare van die hoof van die hoofverkrygingsbeampte (OCPO) het egter aangedui dat verdragings in dienslewering nie altyd weens gefragmenteerde wetgewing is nie, maar soms weens swak verkrygingsbeplanning, nie-nakoming en doelbewuste manipulasie van voorskrifte vir openbare verkryging. 'N Algemene rede wat deur die respondente gegee is, was dat "verskillende besluite geneem word op verskillende plekke en vlakke wat onnodige regeringsbureaukrasie tot gevolg het." Die studie het 'n element van politieke inmenging in openbare verkrygings openbaar wat beskou word as vertraging van dienslewering.

Die studie het aanbeveel dat 'n gespesialiseerde Nasionale Biedappèltribunaal (streekgebou) aangestel word met Hoofstuk 9-instansies, wat dringend nodig is om regskoste vir beide regerings- en diensverskaffers te verminder. Alhoewel persepsies voorgestel het dat die OCPO nie onlangse hofuitsprake oorweeg tydens die uitreiking van opdragte nie; die studie het geen wesenlike wetenskaplike bewyse gevind om so 'n idee te ondersteun met 'n gekombineerde 52 persent van die respondente wat nie saamstem nie. Die Nasionale Tesourie behoort 'n eenheid onder die OCPO te vestig om te fokus op die ontleding van hofoorwegings rakende openbare verkryging en adviseer wetgewers dienooreenkomstig. Die studie het ook aanbeveel om 'n oorsig te gee van sommige wetgewing wat die volle aanvaarding van strategiese verkryging in staatsaankope belemmer. Die studie is bedoel om die nasionale tesourie behulpsaam te wees met die behoorlike bestuur van wye konsultasie met alle verkrygingspesialiste in al drie die sfere van die regering en deur versigtig op te stel, raad te gee, hofuitsprake te ontleed, die implementering van hervormings van openbare verkrygings in Suid-Afrika bekend te maak en te rig.

In die lig van bogenoemde opsomming van aanbevelings, is 'n doeltreffende en effektiewe *Aankooppraktyke versus diensleweringsnormatiewe model* ontwikkel en voorgestel om sommige van die bogenoemde aanbevelings te bereik.

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DEDICATION

I dedicate this PhD dissertation to all my family members, a special dedication goes to all my children and I say to you, *ngilindele okungaphezulu kwalokhu engikwenzile, ningangiphoxi Nyath'ezinyama!*

An extraordinary dedication goes to my late father Mgijinyelwa Manyathi (23-01-1948 to 29-01-2019), who raised me while he was the poorest man, without any form of formal education in the village, yet today he produced a PhD graduate. *Ulale ngokuthula Nyathi, ngiyoblala ngikuthanda.*

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ACSA	Airports Company South Africa
AFS	Annual Financial Statements
AGPO	Access to Government Procurement Opportunities
AGSA	Auditor General of South Africa
APP	Annual Performance Plan
APPC	Annual Public Procurement Conference
ARVs	Antiretroviral
BAC	Bid Adjudication Committee
B-BBEE	Broad-Based Black Economic Empowerment
B-BBEEA	Broad-Based Black Economic Empowerment Act
BEC	Bid Evaluation Committee
BoK	Body of Knowledge
BSC	Bid Specifications Committee
C-AMPs	Custodian Asset Management Plans
CFO	Chief Financial Officer
CIDB	Construction Industry Development Board
CIDBA	Construction Industry Development Board Act
CIPC	Companies and Intellectual Property Commission
CLM	Contract Lifecycle Management
CPAR	Country Procurement Assessment Report
CSD	Central Supplier Database
DPME	Department of Planning, Monitoring and Evaluation
DTI	Department of Trade and Industry
DV	Dependent Variable
EME	Exempted Micro Enterprises
EU	European Union
FIC	Financial Intelligence Centre
FICA	Financial Intelligence Centre Act
FMCM	Financial Management Capability Maturity Model
GCC	General Conditions of Contract
GDP	Gross Domestic Product
GPP	Green Public Procurement
IDMS	Infrastructure Delivery Management System
IFMS	Integrated Financial Management Systems
IPID	Independent Police Investigative Directorate
ISM	Institute for Supply Management
IV	Independent Variable
LCA	Life-Cycle Analysis
LCC	Life-Cycle Costing
M&E	Monitoring and Evaluation
MFMA	Municipal Finance Management Act
MSCM	Municipal Supply Chain Management
MTEF	Medium Term Expenditure Framework
NBAT	National Bids Appeals Tribunal

NDP	National Development Plan
NGOs	Non-Governmental Organisations
NHBRC	National Home Builders Registration Council
NPA	National Prosecuting Authority
NPCSA	National Planning Commission of South Africa
NPPD	National Director of Public Prosecutions
NPPF	National Public Procurement Forum
OCPO	Office of the Chief Procurement Officer
PFMA	Public Finance Management Act
PMG	Parliamentary Monitoring Group
PPAB	Public Procurement Advisory Board
PPCRAB	Public Procurement Administrative Review Board
PPD	Public Procurement Directorate
PPOA	Public Procurement Oversight Authority
PPPFA	Preferential Procurement Policy Framework Act
PPPs	Public–Private partnership
PPR	Preferential Procurement Regulations
PSC	Public Service Commission
PSA	Public Service Act
QCTO	Quality Council for Trades and Occupations
R&D	Research and Development
RDP	Reconstruction and Development Programme
RFP	Request for Proposal
RSA	Republic of South Africa
s	Section
SA	South Africa
SAA	South African Airways
SANAS	South African National Accreditation System
SANS	South African National Standards
SAPO	South Africa Post Office
SAPS	South African Police Service
SBDs	Standard Bidding Documents
SCA	Supreme Court of Appeal
SCM	Supply Chain Management
SCMUs	Supply Chain Management Units
SCOPA	Standing Committee on Public Accounts
SCOR	Supply Chain Operations References
SEDA	Small Enterprise Development Agency
SETA	Sector Education and Training Authority
SIPDM	Standard for Infrastructure Procurement and Delivery Management
SIU	Special Investigating Unit
SMMEs	Small Medium Micro Enterprises
SOEs	State Owned Enterprises
SPB	State Procurement Board
SPP	Sustainable Public Procurement

STBA	State Tender Board Act
TCC	Tax Clearance Certificate
TCO	Total Cost of Ownership
U-AMPs	User Asset Management Plans
UK	United Kingdom
ZPPA	Zambia Public Procurement Authority

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CHAPTER 1

INTRODUCTION, BACKGROUND AND NATURE OF THE STUDY

1.1 Introduction

As a basis for the study, there is a critical question that remains unanswered among public procurement scholars. That question is: do public procurement prescripts and their implementation hinder the acceleration of service delivery? Therefore, it is with this unanswered question that this study is conducted and this chapter focuses mainly on introducing the studied topic. It describes the research problem background, states the research problem and its objectives, and formulates research questions in broader terms. The chapter briefly discusses the assumptions and delimitations of the study; it further outlines the dependent variables and independent variables of the study and states the main hypotheses. It briefly reflects on the study's significance and its research methodologies and designs. An application of the hybrid research method as it is used in this study and a motivation for using qualitative and quantitative methods will also be briefly discussed.

The chapter will further discuss the research population, research sampling and data collection methods to be utilised in this study; where survey questionnaires, interview guides and document reviews will be discussed as some of the selected data collection instruments. The data analysis will follow a brief discussion about the development of a *Procurement practices versus service delivery normative model* as an alternative answer to the question above. Ethics in research will also be briefly discussed and the chapter will conclude with the exposition of the study where various chapters will be highlighted.

1.2 Background to the study

Public procurement prescripts are one of the major factors influencing service delivery in most countries around the world. For service delivery to be accelerated national government procurement policy reforms should be strengthened (Nichols, 2000). National public procurement reforms set the pace for the entire government acquisition processes and targets (Lambsdorff, 2007). Therefore, there is currently no dispute about the important contribution public procurement prescripts make towards supporting service delivery initiatives by developing or developed nations around the world. The question that is still unanswered is whether public procurement prescripts make it easier to accelerate service delivery or do they slow service delivery down, which is why the study was undertaken in the first place.

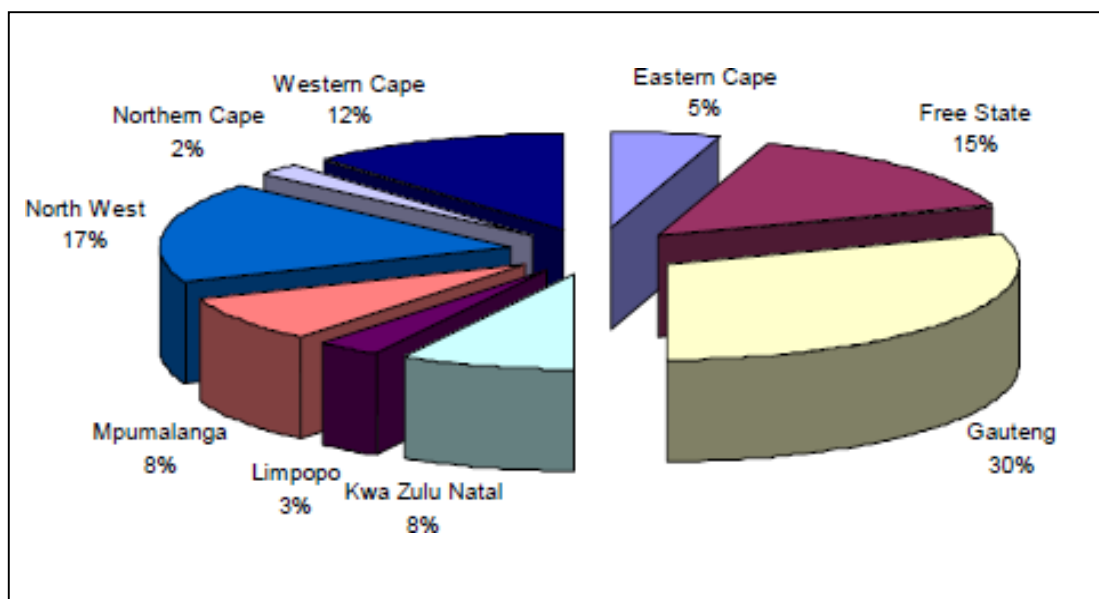
According to Public Service Act 103 of 1994 section 3(i), the mandate of the South African government is to accelerate service delivery to its citizens (Public Service Act, 1994). Service delivery in South Africa is achieved by means of government expenditure using the Municipal Finance Management Act (MFMA) and the Public Finance Management Act (PFMA) in specific procurement processes. In executing its main mandate of service delivery the government introduced various legislative measures around procurement. These measures were meant to govern and guide procurement processes by government officials and by any other government entities.

Public procurement processes were fully introduced in South Africa in the early 2000s. The prescripts that were promulgated to manage procurement have sometimes been highlighted as not being supportive of service delivery acceleration (Ambe, 2009).

The research for the dissertation was conducted within the South African government, with a specific focus on major service delivery departments and municipalities that interact directly with grass-roots citizens and infrastructure development-related services. The study will focus on and include chief directors, directors, deputy directors in public procurement and on public procurement practitioners of the five (5) national and nine (9) provincial major service delivery departments of Health, Public Works, Human Settlements, Social Development and Transport, and one large municipality from each of the nine (9) provinces. As the researcher works for the Department of National Treasury, which is the custodian of all the monies belonging to government of South Africa (SA) and oversees procurement legislation, he has a good grasp of the government and its departmental procurement structures and processes.

The main government mandate in South Africa is to render service delivery to the citizens of the country, through various procurement processes. In order to execute this mandate, the government uses a variety of legislative measures, emanating from the Constitution s217, to procure various goods, services and works. After service delivery protests in each of the provinces, see Figure 1.1 below, the view was expressed by ordinary citizens and seasoned political analysts, such as Fikeni (2014), that the current government needs to review and accelerate service delivery mechanisms. It was felt that the government should respond to these suggestions in order to effectively and efficiently provide the widely needed services to the citizens. Fikeni (2014) added to this by saying, “The country suffers from compassion deficit.” The dissertation will probe the possibility that the current legislation and its implementation inversely affect service delivery and offer recommendations for the review of related legislation and its implementation.

Figure 1.1. Provincial breakdown of service delivery protests: January–July 2011



Source: Shaidi (2013)

1.3 Background to the problem statement

Government institutions have, for many decades, largely treated public procurement as a back office support function. As such, public procurement is treated as a purely administrative process guided by various standardised procedures, including strict legislation (New South Wales Government, 2002). Over decades, the government procurement processes have been affected by various reforms and changes; therefore, public procurement requires a new approach in order to deliver the urgently needed services from government (Pautz, Watermeyer & Jacquet, 2003).

As a result, transformation and reforms in South African public procurement have created anxiety, threats and opportunities for different citizens of the country. Such threats and opportunities created uncertainty in public procurement processes, which affected the mission and vision of government bodies such as the National Development Plan (NDP). To demonstrate some of the challenges in achieving the NDP it has been suggested by many public servants and some scholars that legislation, policies and guidelines are not yet properly or adequately aligned for implementation by government institutions. Some challenges relate to the conduct of some public procurement practitioners, which is currently perceived to be highly unethical.

It is accordingly important to develop solutions to some of the above-mentioned challenges with the intention of ensuring that there is proper financial management, good governance, and ultimately, enhanced service delivery (Pautz et al., 2003). One of the scholars argues that public procurement is held back by the considerable challenges it faces in coordinating and managing its supply chain management processes throughout the product value chain (Lee, 2002). As a result, these challenges compel government authorities to develop strategies in order to ensure that supply chains are competitive in all respects. Couple this with creating capabilities that will add value to public procurement – thus boosting investor confidence and adding value to the lives of end-users and citizens at large through improved service delivery (Lee, 2002:105; Ismail & Sharifi, 2006:436).

There are many glitches in the public procurement system and this hinders the acceleration of service delivery. Among other things, it is the poor interpretation of the legislation and its subsequent implementation by public sector officials and government entities in procuring goods, services and works to render the most needed services to citizens. The proposed research will probe and critically evaluate legislation that governs South Africa and its public procurement operations. This probe is vital in evaluating whether some procurement legislation needs to be reviewed as this legislation can be seen as a hindrance to accelerating service delivery.

1.4 Main problem statement and main research objectives

The main problem statement and main research objectives will be presented under separate headings of the following paragraphs.

1.4.1 Main problem statement

Against the above background, the primary research question can be stated as:

“Does South African public procurement legislation and its implementation have any inverse impact on accelerating service delivery?”

Therefore, it is important to research the possibility that some aspects of public procurement legislation and its implementation might have an inverse impact on service delivery acceleration mechanisms. The study will evaluate the possibility that a review of the public procurement legislation will enhance the acceleration of service delivery mechanisms. For service delivery mechanisms to be accelerated the South African government needs to review some of its public procurement legislation.

In an effort to determine answers to the primary question, the secondary research questions below will be answered by this study:

- a) Which legislation governs South African public procurement?
- b) What are the procurement challenges caused by public procurement legislation?
- c) What are the strategies to be used in order to mitigate procurement challenges and risks?
- d) What are corruption and fraud practices in public procurement and how to mitigate them?
- e) Which public procurement legislation needs to be reviewed?
- f) What model or framework for adoption would make public procurement more effective?

1.4.2 Main research objectives

The main research objective can be stated as, “to determine whether South African public procurement legislation and its implementation has any inverse impact on accelerating service delivery”.

As a result, the secondary study objectives can be stated as follows to determine:

- a) legislation that governs the South African public procurement
- b) procurement challenges caused by public procurement legislation
- c) public procurement legislation that should be reviewed
- d) strategies to be used in order to mitigate procurement challenges and risks
- e) an effective public procurement model or framework to be adopted
- f) public procurement fraud and corruption practices that should be mitigated.

1.5 Delimitations of the study

The delimitations, as described by Sekaran (2003), are those processes which limit the scope and determine the restrictions of the study. The researcher assumed that participants would answer honestly, because their confidentiality was guaranteed and preserved. The respondents were clearly advised that they were volunteering to participate in the research study, and they could stop participating at any time during the study without coercion or negative consequences. Another

delimitation in this study was the geographic spread of the study and its respondents. The study was about service delivery and public procurement legislation challenges in South Africa and cannot be necessarily applied to other sections of the public sector in general. Furthermore, the criteria of participants selected for the study constitute delimitation, as highly technical and operational employees were excluded, as they could not comprehend some of the questions probed during the course of interviews and questionnaires.

1.6 Assumptions

There is a widely held perception across the country that there are strong negative relationships between public procurement legislation and service delivery. This results in the perception that service delivery is delayed because the current public procurement legislation is hampering the accelerated service delivery mechanisms in South Africa. Further, the perception holds that the more rigid public procurement legislation is the less service delivery by government institutions happens.

Public opinion feels that there are strong negative relationships between public sector procurement methods, processes and service delivery challenges. This perception further suggests that there are service delivery delays due to the inefficiency of some of the public procurement methods and processes. Some members of the public go even further and suggest that if public procurement was executed in the same way as in the private sector, reducing much of the bureaucracy associated with public procurement methods and processes, service delivery would be accelerated.

Lastly, there are further perceptions from society that there are strong negative relationships between public procurement fraud, corruption and service delivery challenges. The assumption further indicates that, in many cases, government officials, politicians and private businesses (service providers) delay service delivery because of fraud and corruption. Due to the above assertions, it is not surprising that the perception of the higher the corruption and fraud the lower the standard of service delivery. A typical example that supports this perception would be government-subsidised houses which collapse within two years of construction.

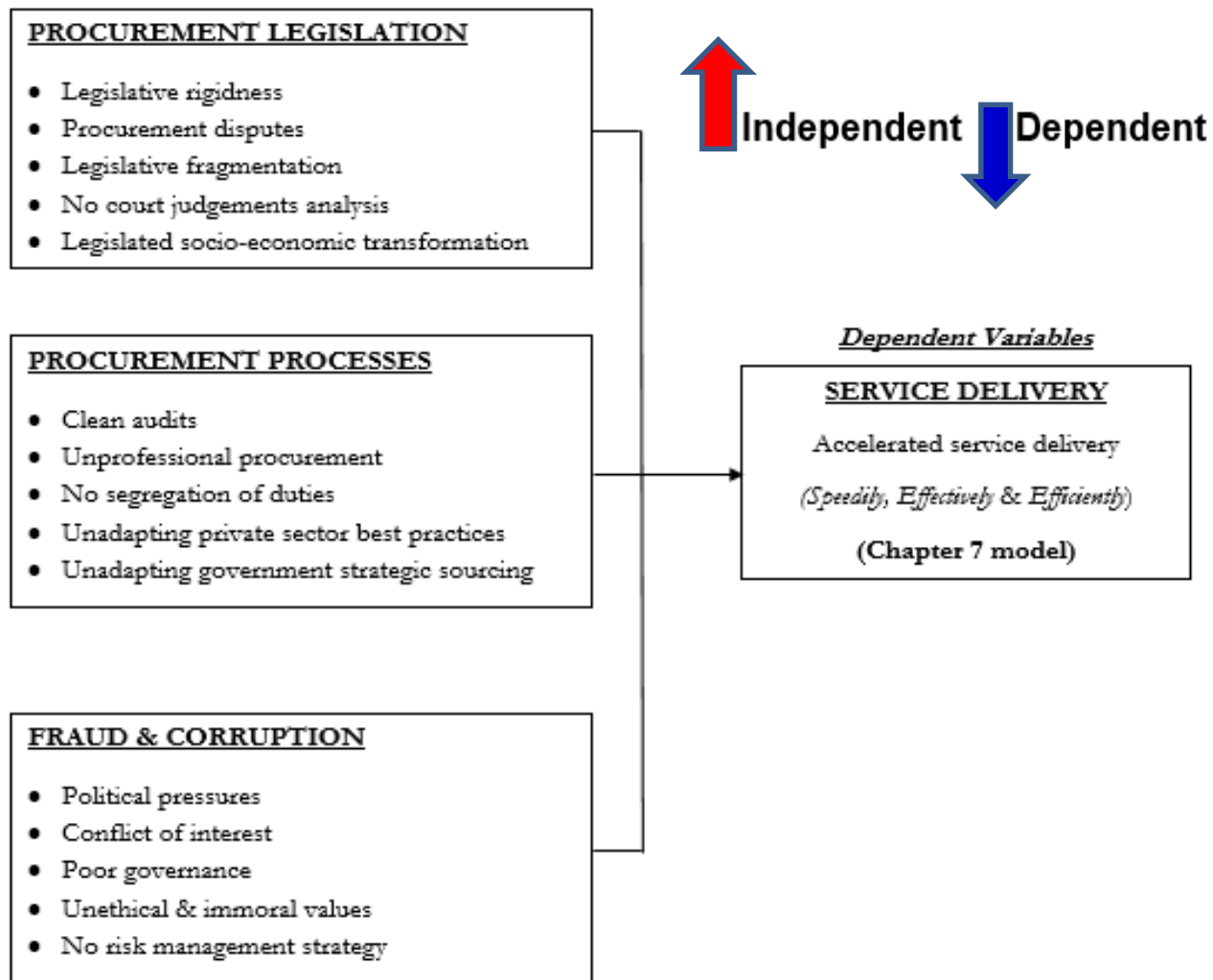
1.7 Dependent, independent variables and hypothesis of the study

The dependent, independent variables and hypothesis of the study will be discussed under separate headings below.

1.7.1 Dependent and independent variables

Figure 1.2 below depicts the process link between the dependent variables and independent variables. The impact of independent variables (procurement legislation, procurement processes, fraud and corruption) is highlighted on the dependent variable (service delivery). Furthermore, Figure 1.2 describes the coherent relationship between the independent and dependent variables.

Figure 1.2. Review of dependent and independent variables

Independent Variables

Source: Researcher's own

1.7.2 Hypotheses

Against the above problem statement background, Figure 1.2 demonstrates the formulation and relationships of the study hypothesis. The higher the rigidity of public procurement legislation and processes, the higher the level of poor service delivery. H^0 stands for null hypothesis and H^1 stands for an alternative hypothesis in each of the three hypotheses stated below:

Hypothesis 1

H^0 : There are negative relationships between service delivery and public procurement legislation.

H^1 : There are no relationships between service delivery and public procurement legislation.

From the above hypotheses, the null hypothesis will be rejected if the evidence from Chapter 6 of the dissertation suggests that there are no negative relationships between service delivery and public procurement legislation, and then the researcher will have to accept the alternative hypothesis. Otherwise, the researcher will have to accept the null hypothesis.

Hypothesis 2

H⁰ : There are negative relationships between public sector procurement methods, processes and service delivery.

H¹ : There are no relationships between public sector procurement methods, processes and service delivery.

From the above hypotheses, the null hypothesis will be rejected if the evidence from Chapter 6 of the dissertation suggests that there are no negative relationships between public sector procurement methods, processes and service delivery, and then the researcher will have to accept the alternative hypothesis. Otherwise, the researcher will have to accept the null hypothesis.

Hypothesis 3

H⁰ : There are negative relationships between public sector procurement fraud, corruption and service delivery.

H¹ : There are no relationships between public sector procurement fraud, corruption and service delivery.

From the above hypotheses, the null hypothesis will be rejected if the evidence from Chapter 6 of the dissertation suggests that there are no negative relationships between public sector procurement fraud, corruption and service delivery, and then the researcher will have to accept the alternative hypothesis. Otherwise, the researcher will have to accept the null hypothesis.

1.8 Significance of the study

The driving force behind accelerated service delivery by all government institutions is to achieve the government purpose; accordingly, all public servants are expected to be committed and focused on delivering value for money in service delivery (Hendrikz, 2003). Generally, all government institutions were formed to achieve a specific mandate as required by the Constitution s195.

The study will assist in determining which legislation might need to be reviewed to improve and accelerate service delivery mechanisms. The contribution of the study to the body of knowledge will be about reviewing the current government procurement process reforms. The study will contribute to the correct procurement legislation interpretation and implementation procedures.

Value for money will be realised by the contribution of the study to the body of knowledge through ensuring improved service delivery. The study will also address the slow pace of the transformation agenda, which came about with the Reconstruction and Development Programme (RDP) and the Millennium Goals that the South African government set for itself.

The reason for choosing to conduct a study in public sector procurement prescripts versus service delivery was based on the following:

- a) There are many questions that remain unanswered by public procurement scholars, especially around whether or not public procurement prescripts and its implementation hinder the acceleration of service delivery.

- b) There are many public procurement challenges identified by different scholars in various studies, therefore the study aims to contribute to improving public sector procurement operations by answering some of these questions.
- c) Ultimately, the study will develop a *Procurement practices versus service delivery normative model*, which is aimed at reviewing those public procurement legislative processes which are viewed as hindering accelerated service delivery.

The study was conducted at a strategic and relevant time where South Africa, over a decade and a half, decided to demolish tender boards in an attempt to institute public procurement reforms. The instituted reforms paved the way for giving powers and authority to accounting officers and authorities to become accountable for managing public procurement and the overall funds of their respective government institutions.

1.9 Research designs and methodologies

The paragraphs below will discuss matters relating to research designs, methodologies, study population, sampling, data collection instruments and data analysis, in order to better understand the problem being researched.

1.9.1 Research designs

As described by Gatrell, Bierly and Jensen (2006) research designs are an important process in the study, where ideas, research questions and some interests are transformed from being a “thought”, to be a purposeful and meaningful result, especially in social sciences. The researcher opted to use explorative and descriptive research techniques in trying to test the hypothesis stated above. As explained by Kumar, Ozdamar and Zhang (2008:10), in order to uncover any relationships between existing variables, a researcher ought to adopt a study approach that is cross-sectional; where data is collected by means of distinct but related variables which are matched. Accordingly, a cross-sectional approach had to be adopted to determine the link between service delivery and procurement practices.

The study applied both quantitative and qualitative research designs, where triangulation was attained by collecting quantitative data through structured questionnaires, sometimes respondents were requested to justify their responses. Qualitative data collection was also executed using the interview guides; whereas structured questions (qualitative data) sought to test the extent to which public procurement strategies and practices implemented in South Africa are hindering service delivery. By using qualitative questions, an exhaustive understanding of procurement processes and strategies in South African public sector procurement was sought. The reasons for employing both research designs in the study are to achieve (1) complementary results, (2) triangulation, (3) development and (4) expansion in detail.

As clarified by Greene (2007), because every research method utilised in any study falls in between extreme quantitative or extreme qualitative, it is sometimes also possible to establish whether a study tends more towards qualitative or to quantitative methods. This will influence decisions about which method to adopt in terms of collecting and analysing data. Accordingly, a very basic outline of key differentiating features between quantitative and qualitative research designs is covered in Chapter 5.

1.9.2 Research methodology

Qualitative data was analysed using coded words, which were grouped into themes and categories; furthermore, in the quest to transform interview transcripts, the researcher relied on qualitative Likert scale ratings for linking interview transcripts of data into quantitative polynomial data (Cavana, Delahaye & Sekaran, 2000). There are several weaknesses in each research method, for example, quantitative methods have shortfalls on the basis that quantitative methods do not fully understand the context in which respondents provide their responses; while qualitative methods often “push” the ideas of the researcher so that they could be regarded as having bias. It is because of the above notion that the researcher decided to make use of both methods simultaneously in order for the qualitative methods to offset the quantitative methods’ weaknesses and vice versa. Qualitative methods have further weaknesses, such as a difficulty in generalising the results to the whole population because a small number of respondents are usually interviewed (Graff, 2011). It is therefore for the above reasons, among others, that the researcher opted to use the hybrid research method.

1.9.3 Population and sampling

The study population will be procurement officials, ranging from chief directors, directors, deputy directors in public procurement and on public procurement practitioners of the five (5) national and nine (9) provincial major service delivery departments of Health, Public Works, Human Settlements, Social Development and Transport and one large municipality from each of the nine (9) provinces.

Since it is not possible to interview or survey the whole relevant population at any given time, in social sciences research studies a sample is mostly used, as in this study where 352 employees were sampled. Thus, a sample is seen as a representation of the entire relevant population (Saunders, Lewis & Thornhill, 2003:151). Furthermore, it is a viable option to survey or interview a population sample and to generalise the study results to the entire population. Therefore, more formally, sampling is a process where subjects of the entire population are represented by a few selected subjects in order to conduct a scientific study which enables a researcher to draw some conclusions in relation to the entire population (Zikmund & Babin, 2007).

The researcher was aware that the selected sample to be studied did not represent the entire targeted population; therefore, the researcher used a non-probability sampling method because it is generally easy and less expensive to administer and relevant when the researcher is not intending to intensively generalise the findings (Cohen, Manion & Morrison, 2007:113). Furthermore, the convenience sampling method was used because participants were normally at the right place when needed, which was convenient for the researcher to access and study the respondents within the timeframe. In this regard, all respondents were employed by one of the three spheres of the South African government during the study.

1.9.4 Data collection instruments

A questionnaire (Appendix C) was constructed using a Likert scale method, which is based on five point ratings for the respondents to choose one option per question (Maree, 2008:167). The

questionnaire is very easy and quick to administer. Therefore, a researcher can gather a huge amount of quantitative data in a very short period and has no need to use trained interviewers, which keeps costs down. The consistency level is very high as the questions asked are the same from the first respondent to the last respondent and there are no follow-up questions.

The study used a semi-structured interview guide (Appendix D); qualitative data collection was done through interviewing a few selected public procurement specialists, senior OCPO officials and experts. Interviewees were spread across the country in order to ensure fair representation for gender and geographical location of interviewees. During the interviews, the researcher remained the leader and the driver of the interview process, with some flexibility allowed for both the interviewee and interviewer to ask questions for follow-up or elaboration. There are several benefits that come with the use of semi-structured interviews; benefits such as being able to accurately capture information relating to observable features of respondents – such as gender, height and other physical observations.

The researcher intends to peruse, review and study various public procurement-related documents. The documents range from journals, relevant books and any public procurement legislation and or service delivery related content. Court judgments relating to public procurement will be intensively analysed to get a better understanding of what public procurement practitioners are, or are not, doing correctly. Key public procurement documents issued by government institutions such as the Department of Trade and Industry (DTI) and National Treasury; therefore, the practice notes on public procurement, circulars on public procurement, and guidelines on public sector procurement will be thoroughly reviewed.

1.10 Data analysis

Generalisation or transferability of research findings is an indication that a researcher can extend the account of a specific population and situation to those who were not directly studied (Painter & Rigsby, 2005). Therefore, data analysis can be roughly described as a procedure of converting raw data from various sources into useful information that can give meaning and value to the study (Brassington & Pettitt, 2006).

The questionnaire responses were analysed using e-Views 9.5 statistical software packages, SPSS, Microsoft Word and Microsoft Excel. Graphical representation of responses according to the questionnaire sequence are depicted in Chapter 6. To transform the interview transcripts, the qualitative Likert scale ratings for linking the quantitative polynomial data transformation method was used. The process of data analysis was conducted in order to seek respondents' clear views and opinions where applicable. Analysing qualitative data led to the extrapolation of the common themes that informed thematic analysis. In this study, the researcher did more in-depth analysis into individual perspectives and searched for commonality among the respondents' views. A qualified statistician in the field was approached to assist with data analysis and interpretation.

1.11 Procurement practices versus service delivery normative model

The *Procurement practices versus service delivery normative model* was proposed to address the challenges that came through procurement practices (prescripts) in service delivery which were analysed in Chapter 6. A detailed plan and process was outlined in this normative model in Chapter 7 in order to reduce incidents of public procurement issues causing delays in service delivery.

1.12 Ethical considerations

In this study, permission to access respondents was sought from each delegated authority of each government institution studied, a procedure supported by Saunders et al. (2007:104). Accordingly, the researcher sought written consent from all respondents before they filled in the research questionnaires and/or participated in semi-structured interviews. The respondents' confidentiality was guaranteed. Furthermore, permission was sought from all accounting officers of relevant government institutions to conduct the research study in their organisations; moreover, no harm was done to any respondent. Lastly, the aim of ethics in any study is to make sure that no one suffers or is harmed due to participating in a study. There are many types of unethical behaviours a researcher must avoid, among them violating non-disclosure agreements, deceiving people and misrepresenting results.

1.13 Exposition of the study

The structure of the research and its chapter summary are outlined in Table 1.1 below.

1.13.1 Research structure

As for this research, the study consists of eight (8) chapters and they are structured in Table 1.1 as follows:

Table 1.1. Eight chapters of the research study

Chapter 1	This chapter will introduce and provide background to the study . It furthermore deals with the main problem statement; main research questions; reasoning behind the study; main research objectives and the preliminary literature review to deeper understand the study in context.
Chapter 2	This chapter will review the theoretical framework of generic public sector procurement ; provide a definition and background of generic public sector procurement, provide a comparative review of private versus public procurement. A definition of service delivery and its relationship with public procurement will be thoroughly discussed. Furthermore, some public procurement reforms, corruption and service delivery will be discussed. A summary overview of public procurement as it relates to three randomly selected African countries.
Chapter 3	The literature review in this chapter will examine the South African legislative environment governing public sector procurement to provide public goods, services and works. This chapter will also investigate the root causes of, as well as the underpinning reasons for, service delivery delays.
Chapter 4	This chapter will present the procurement processes, norms and standards specific to South Africa . It explores specific procurement processes and other procurement norms and standards that are used to provide services.
Chapter 5	In this chapter, the research methodologies to be used for the purpose of this research will be discussed. It also discusses research design, research instruments, sampling procedures, collection of data, data analysis, research reliability and validity, the trustworthiness of the study and ethical considerations.
Chapter 6	This chapter will present results that will emerge from the empirical study, analyse and interpret the public procurement norms, standards and practices in conjunction with the current South African public procurement legislation.
Chapter 7	This chapter will revisit the research questions as formulated in Chapter 1. The chapter will further present key contributions to public procurement body of knowledge through four interrelated phases of theoretical contributions, methodological contributions, practical contributions and a development of a model or framework to be adopted by National Treasury.
Chapter 8	This chapter will revisit the research objectives posed in Chapter 1. The chapter will further present some of the critical recommendations, summary and conclusions of the study , which will be proposed in response to the challenges to be identified by the researcher in relation to the causes of service delivery delays due to public procurement legislation implementation.

Source: Researcher's own

1.14 Summary and deductions

There were some deductions drawn from Chapter 1. The chapter discussed the background to the research problem, where it was indicated that public procurement has always been regarded as a back office function for support purposes which was characterised by highly standardised administrative processes based on pre-determined procedures. However, the discussions showed evidence that there have been some transformation and reforms adopted by the South African government to revive effective public procurement. Where it was indicated that there were challenging areas it has been assumed that some government institutions sometimes execute legislation, policies and guidelines improperly. Some undesirable and unethical conduct has been acknowledged and is assumed to happen a lot in public procurement operations. The above resulted in the researcher stating the research problem and its research objectives in broader terms.

The chapter further outlined the independent and dependent variables of the study, which indicate that procurement practices influence service delivery as a dependent variable, and further indicated that there were three major independent variables: government procurement legislation, tendering processes and fraud and corruption practices. The above resulted in a brief formulation of the three main hypotheses of the research study.

The chapter also briefly reflected on the research design, research methodology and application of the hybrid research method, as they will be used for this research. There were weaknesses identified in each research method. The quantitative method does not fully understand the context in which respondents provide their answers, while the qualitative method often “pushes” the ideas of the researcher, potentially risking bias. It is because of the above and other reasons that the researcher decided to make use of both methods simultaneously, a hybrid model, in order for the qualitative method to offset the quantitative method’s weaknesses and vice-versa.

In conclusion, the chapter discussed the research population, research sampling and data collection methods utilised in this research. Survey questionnaires, interview guides and document reviews were discussed, as well as some selected methods for data collection and furthermore processes for data analysis were briefly discussed. Some attention was given to ethics in research and the chapter concluded with the exposition of the study chapters, which was briefly highlighted.

The next chapter provides an overview of a generic public sector procurement, within which some of the South African public procurement processes are benchmarked. Service delivery and its relationship with public procurement and impact of corruption will be thoroughly discussed. A summary overview of public procurement as it relates to three randomly selected African countries will be discussed.

CHAPTER 2

PUBLIC SECTOR PROCUREMENT: A GENERIC OVERVIEW

2.1 Introduction

Drawing from the discussions of Chapter 1, the study introduced the problem statement, research objectives, research questions, study assumptions-hypothesis, research design and research methodologies. Therefore, it is proper to start reviewing some literature relating to the study. The main focus of the literature review in this dissertation is on public procurement legislative practices and its effects on service delivery. In most cases, the reason why literature is reviewed it is to elaborate clearly the study problem statement (De Vos, Strydom, Fouché & Delport, 2005:125). Furthermore, Aitcheson (1998) alluded that a literature review is a collection of related published material used to yardstick the depth of publications already in the public domain with regard to the significance of the intended research project. Hence, this chapter attempts to achieve one of the study research objectives, which is to understand the operations of public procurement in general. The researcher covered all relevant publications and concluded by agreeing and disagreeing with some of the published material.

In response to the above assertions, this and the two subsequent chapters will attempt to review literature relating to the study, however, this chapter will specifically review literature relating to public sector procurement in a generic overview. In particular, it will give some background on public procurement, followed by a discussion of the need for developing economies to reform public procurement processes. The effects of public procurement on service delivery will also be discussed. There will be a discussion of some South African trends on serious service delivery protests, coupled with Auditor General of South Africa's (AGSA) national audit outcomes versus service delivery. There will be an overview of the relationship between public procurement and service delivery with its four urgent public procurement reforms.

Furthermore, there will be a distinction between procurement and supply chain management and between public and private sector procurement, coupled with some similarities. There will be discussions of private sector lessons that can be learned by public sector procurement, including some external and internal demands found only in public sector procurement. The chapter will also review literature relating to a rare form of government procurement, the Public-Private Partnerships model. Public procurement corruption with its effects on service delivery, will also be discussed. The chapter will conclude with a summary overview of public procurement as it relates to three selected African countries.

2.2 Background to public procurement

The South African Constitution (1996: s217) dictates that "When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective." The Constitution further indicates that organs of state

or institutions are not prevented from, “implementing a procurement policy providing for (a) categories of preference in the allocation of contracts; and (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.” (Constitution, 1996: s217). Therefore, as indicated above, the South African government regarded public procurement as an important element for service delivery so as to include it in its constitution. This is because the government anticipated that, after 1994, the public sector will be procuring a lot of public services which currently stands at around R900 billion (2017/18) for service delivery, this type of expenditure grows each year (Nene, 2018).

The fundamental duties of government entities are not limited to just direct service delivery but extend to cover matters from contract management in order to fast track service delivery. Therefore, public procurement possesses an imperative role in ensuring high performance in service delivery by national, provincial and local governments and other government institutions involved in service delivery (Uyarra & Flanagan, 2009). One of the reasons that public procurement is involved in key service delivery activities, is because service delivery includes purchasing of goods, services and works. Therefore, this indicates that it is almost impossible to separate government institutions from direct or indirect service delivery through public procurement.

Mahmood (2010:12) initially estimated that expenditure from government makes around 18 percent of the world’s aggregate gross domestic product (GDP), which in turn is executed through public procurement. Mahmood (2010) further estimated that government expenditure constitutes around 13 percent of the individual developing countries’ GDP. Bolton (2016) further estimates that “the size of public procurement in South Africa is estimated to be around 22% of gross domestic product.” As alluded to above, government spends around R900 billion annually on public goods, services and works, mainly through procurement. It is for these reasons that the researcher regards public procurement as a very important aspect of every economy and therefore close attention should be paid in order for public procurement practitioners to conform with all promulgated public procurement procedures, policies, regulations and acts, as confirmed by Odhiambo and Kamau (2003). However, notwithstanding so many prescripts governing public procurement, public funds are still reported to be misused and looted. De Lange (2011) discovered that this is mainly due to manipulation and mismanagement of government procurement systems. Therefore, public sector procurement practitioners need to be closely monitored to ensure value for money on public resources.

2.3 Developing economies and public procurement reforms

Developing countries around the world usually use procurement in public sector in such a way that it is a “vehicle for implementing various socio-economic preference policies” (Qiao, Thai & Cummings, 2009:371). In some countries, public procurement is strategically utilised as a directive for transformation to redress the imbalances of the past, which were sometimes unfair and discriminatory, hence public procurement always operates under tight scrutiny from political system of each developing country (Wittig, 2007; Watermeyer, 2011). It is with this in mind that social, industrial and environmental policies are sometimes executed through the public procurement of each developing country. Public procurement is also used to enforce other legislation of any developing country, which are secondary objectives of public procurement, while service delivery remains a priority of public procurement (Cane, 2004). Contrary to the widely known conflict of

interest in most developing countries, it is still possible for public officials to award tenders to themselves or to non-existing service providers (made-up companies that does not exist) (Global Integrity, 2010). It is still evident that underperforming service providers are often not blacklisted (not eligible for government contracts anymore) which means they remain eligible to contest for government tenders; this indicates a repeated lack of consequence management in public procurement (Uromi, 2014).

Vellapi (2010) alluded to the fact that most countries use public sector procurement as a strategic tool to ensure that the entire government delivers quality and sustainable services to its citizens. The World Bank (2012) concurred and indicated that programmes that run through public procurement are important in that they have a direct impact on improving the public sector operations. Thus, from this perspective, the researcher perceives public procurement as a crucial element in efficient and effective public service delivery.

Public procurement also coordinates all relevant stakeholders, such as internal organisational customers, external service providers and partner organisations in order to deliver a combination of input and output, which will help meet public service needs. Private service providers, which get purchasing orders from the government entities, accounting officers, constitutional bodies and other main stakeholders such as legislature are key to the operational efficiency of public procurement (OGC, 2005).

2.4 Effects of public procurement on service delivery

The below subsections will unpack what service delivery is, analyse trends that relate to protests due to lack of or poor service delivery, it will outline the relationship between audit outcomes and service delivery and lastly look at the relationship between public procurement and service delivery.

2.4.1 What is service delivery?

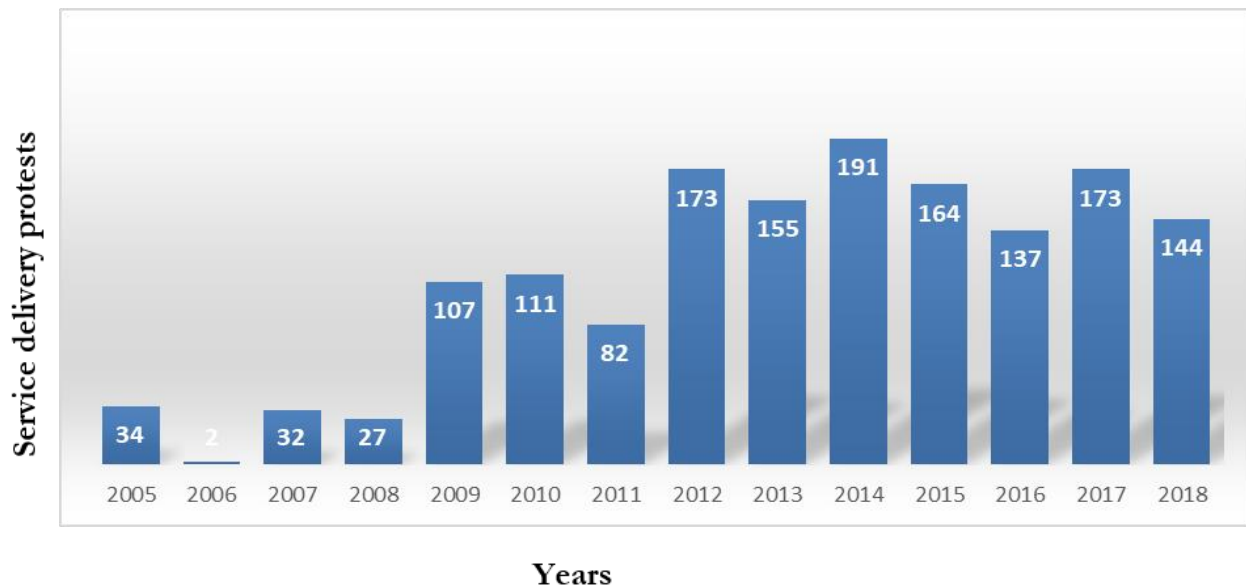
Service delivery is an ultimate goal for all the governments, especially democratic governments, around the world. According to Mfene (2009:210) as he broadly defines delivery of public service as an “encompassing activity aimed at promoting the general welfare of the community”, this broad definition confirms the contract that should exist between the citizens and the government to deliver public services. Furthermore, the Parliamentary Monitoring Group (PMG) (2010:4) broadly defines service delivery as an “outcome, of which the scale and quality depends on factors such as clear and realistic policies; appropriate allocation of powers, functions and financial resources; performance and accountability of state organs to implement policies; coordination between organs of state; public participation and involvement as well as the level of self-reliance of communities.” While two definitions were given in different contexts there is a common thread between them and that is that community well-being is at the centre of both definitions of service delivery.

As far back as 1996, service delivery was predicted to be a problem for the then new democratic government in South Africa (Moosa, 1996:6). The government was expected to struggle to meet the service delivery expectations for the previously marginalised South African communities. Based on the above broad definitions and descriptions of service delivery, it is clear that when the governments collect taxes and levies, the citizens expected them to provide efficient and effective

service delivery mainly through public procurement. It is for the above reasons that public procurement is critical in rendering quality public services to the residents and the reasons why the research was conducted: to check the public procurement operations' impact on delivery of a high standard of public services. Figure 2.1 below confirms the government struggle to meet citizens' service delivery expectations as the number of serious service delivery protests increases annually.

2.4.2 Trends on serious service delivery protests from 2005 to June 2018 in South Africa

Figure 2.1. Serious service delivery protests from 2005 to June 2018 in South Africa

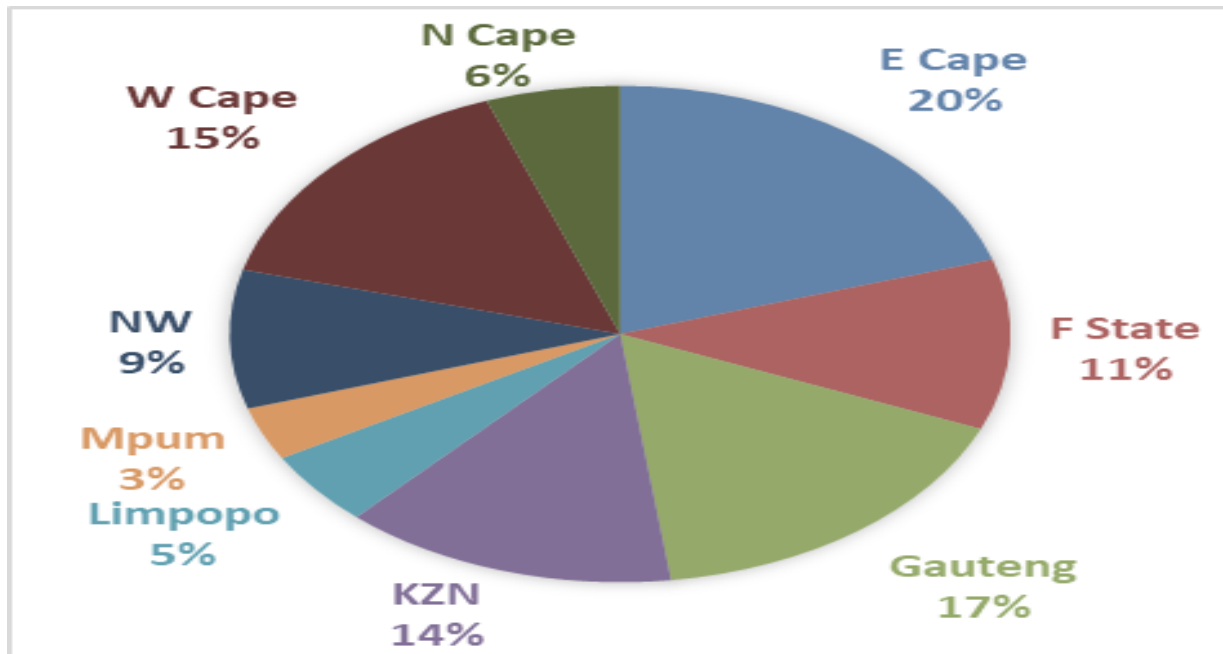


Source: Municipal IQ (2018)

Serious service delivery protests in Figure 2.1 have been increasing significantly as it is monitored by Municipal IQ (2018). There is a record high of 1532 serious service delivery protests between 2005 and 30 June 2018. With 2014 having a record high of 191 serious protests it is highly likely that 2018 will be the highest on record as the figures run up to 30 June 2018 but it is only at 144 (half-year). This confirms what Moosa (1996) predicted that the government will struggle to meet the expectations of citizens when it comes to speedy and quality service delivery in South Africa. According to Figure 2.1 from 2005 to 2011 as compared to 2012 to 30 June 2018, there has been a more than 100 percent rise in serious protests due to poor service delivery in South Africa.

2.4.3 Analysis of serious service delivery protests per province (January–June 2018)

Figure 2.2. Analysis of serious service delivery protests per province (January–June 2018)



Source: Municipal IQ (2018)

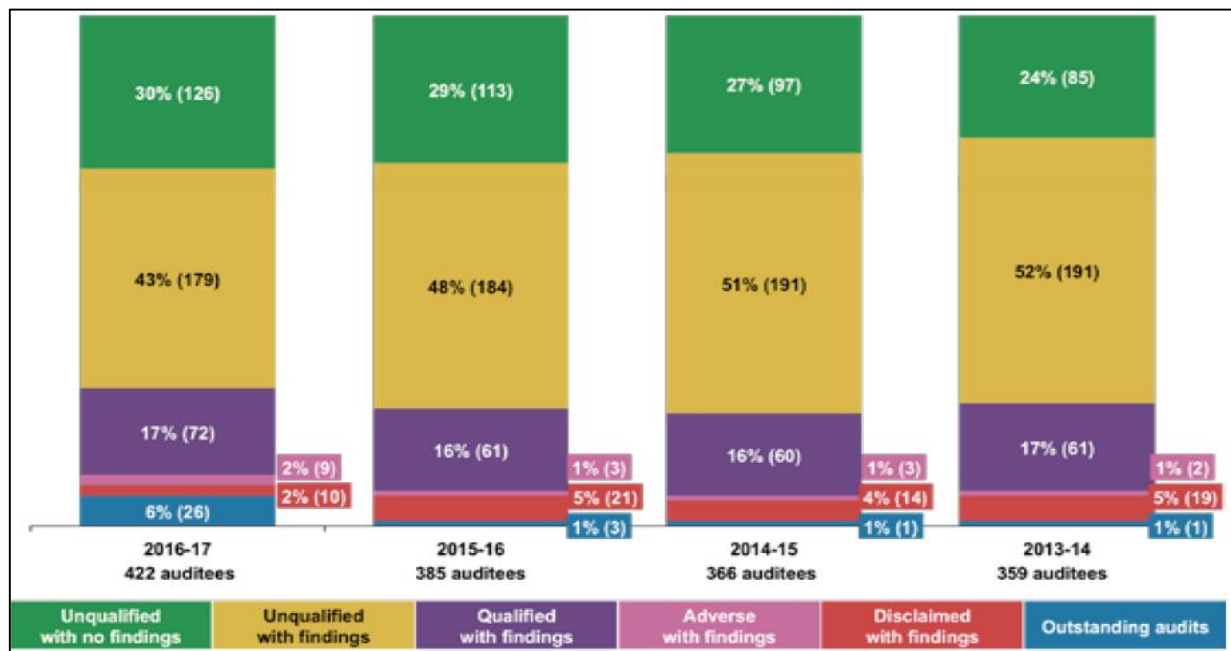
Figure 2.2 above gives a percentage of each province contribution to the national serious protests for the period of January to June 2018. It indicates that Eastern Cape had the highest service delivery protests for the studied period with 20 percent of the national protests. The second highest province is Gauteng followed by Western Cape with 17 and 15 percent respectively.

The highest number of serious protests relating to service delivery were recorded in the Eastern Cape and Gauteng. With special reference to the Eastern Cape, law enforcement agencies found it difficult to maintain law and order in protesting communities. While in the Western Cape protests, it was mainly due to the housing backlog that the province is facing, therefore protests were mainly directed around the shortage of houses (Municipal IQ, 2018). The province showing the lowest protests is Mpumalanga with only 3 percent followed by Limpopo sitting at 5 percent. The figures indicate that the government still has a long journey towards ensuring that it serves its core mandate to deliver effective and efficient service delivery, especially as Figure 2.2 only reveals half-year figures of 2018.

“Service delivery protests have become a daily feature of South African life, with an alarming increase in violent confrontations between protesters and police. As a result, the opportunity for communities to engage constructively on grievances is lost and municipalities or the government need to work hard to ensure that channels for such communication remain accessible and relevant”, as stated by the Municipal IQ (2018) in its analysis which basically indicates that service delivery protests are becoming a daily norm and they are getting out of hand.

2.4.4 AGSA national audit outcomes for 2013–2016

Figure 2.3. AGSA national audit outcomes for 2013–2016



Source: AGSA (2017)

The ultimate goal of public auditing is to make sure public resources are utilised as per the intended purposes following proper public procurement legislation, as it is no use getting clean audits with no service delivery. The above assertion is among the reasons why the study was conducted, which is to probe the public procurement practices' influence on service delivery including public procurement audits. There has been a slight improvement in overall general audit outcomes in the public sector. This has been confirmed by Figure 2.3 above which tracked audit outcomes for a period from 2013 to 2016; where clean audits improved from 24 to 30 percent with a real increase of 6 percent. There has been a slight improvement in disclaimed audit outcomes from 5 to 2 percent representing a regression of 3 percent; at the same time there has been rather constant audit outcomes when it comes to qualified audit outcomes as it stood at 17 percent in 2013 and 2016. The above figures emphasise the question of whether or not clean audits translate into accelerated service delivery.

2.4.5 Public procurement and service delivery

The World Bank (2012) argues that public procurement is crucial to deliver efficient and effective public services. However, the World Bank (2012) warns the government officials not to regard it as a success in public procurement when complying with all public procurement rules and regulations but they must achieve effective and efficient public services, development and various other government policy objectives. There has been a huge emphasis on having public procurement that is compliant with various public legislation, but also it should actually deliver the needed public services and World Bank (2012:11) confirms that "Public procurement systems should be measured not merely by formal compliance with procedures but also by the achievement of development and other policy objectives."

The South African Constitution guarantees all citizens adequate access to water, electricity, a clean environment and shelter among other basic services; these are the foundations of the public services expected from any legitimate government. Moosa (1996:2) cautioned that “government would require wisdom and creativity to meet those expectations in the shortest possible time due to the great reservoir of unfulfilled needs.” This assertion confirms the prediction that service delivery would be causing many protests if the government does not meet citizens’ expectations.

According to the World Bank (2012), four interrelated reforms are urgently needed in public procurement in order to speed up efficient and effective public services. The first one being the consolidation of the legislation that governs public sector procurement, in this reform the foremost objective is to ensure improved guidance to public procurement officials. Furthermore, it is aimed at reducing instances of diminished public service outputs and inefficiencies. The study therefore believes that, in order to achieve this reform, the governments and procurement authorities must reduce instances of outdated and deficient public procurement legislation.

The second public procurement reform that is urgently needed would be efficient and effective public procurement systems; which might include properly skilled officials, effective policies and good oversight in public procurement units for each institution. The researcher believes that this reform is necessary, especially as there are public services that need to be centralised and others decentralised, in South Africa there is a use of a transversal contracting procurement system for specialised strategic products such as mobile communication services for state employees.

This last reform links very well with the third reform proposed by the World Bank (2012) which is professionalisation of the public procurement workforce; this will assist in ensuring that professional ethics are upheld by all practicing officials and further ensure that officials who transgress public procurement laws are disbarred. The fourth reform is also linked to the last reform in the sense that there should be some modernisation of public procurement which might include e-government and e-procurement. In South Africa, there is the Central Suppliers Database, which is intended to evolve until it is a fully operational e-procurement system.

2.5 Procurement versus supply chain management

The two subsections below will discuss the major differences between supply chain management and procurement this is due to the fact that mostly, public sector mainly performs the procurement which forms part of the supply chain management stages and not the final supply chain management process.

2.5.1 Procurement

Bolton (2007) generally describes procurement as a process where goods and services are bought from an outside body. Furthermore, as defined by Pauw (2011), procurement is an act of buying goods, services and works to satisfy organisational needs. Furthermore, procurement is one of the supply chain management elements that covers the process from the preparation of specifications, advertising, receiving, evaluating and awarding of all bids up to the receipt of goods, services and works and, finally, to effecting payment. Accordingly, this means that procurement is a wider

concept than just purchasing, because purchasing is simply the act of buying a product or service. In addition to buying, procurement includes the act of purchasing, as well as additional related activities such as requesting quotations, supplier selection, placing the purchase order and ensuring the delivery of the order (expediting). Therefore, procurement is when goods, works and services are bought from private firms (suppliers) and seldom bought from other organs of state. The procurement process, also comprises of placing and expediting purchasing orders, receiving ordered products, effecting payment, contract management and conducting supplier performance reviews.

2.5.2 Supply chain management (SCM)

Christopher (2005) defines SCM as a process whereby there is creation of net value through planning, designing, controlling, monitoring and execution of related supply chain activities to ensure that goods, services and works are delivered accordingly. Furthermore, the requirement of working in collaboration and sharing information is core to all operations of supply chain management to ensure proper co-ordination. Oversight of finances and information sharing for the achievement of sustainable market competitive advantage is also part of this coordination.

Moeti (2014) indicated that supply chain managers are people at various levels of linked organisations who are responsible for demand and supply of services, works and goods and interrelated information in a coordinated manner across the value chain. Accordingly, a typical example would be in public health sector where antiretroviral (ARVs) are distributed to end patients. Therefore, the manufacturers of ARVs, pharmaceutical depots, warehouses, transporters, hospitals and peripheral clinics are all supply chain partners. Each must play a coordinated and integrated role to ensure that the ARVs are distributed smoothly to the ultimate patients.

Therefore, the overall supply chain management process consists of everybody involved in ensuring that goods, services and works are in the hands of a customer at the right time, quality, place, price and quantity. Logistics, which is one prime element of SCM, deals with the movement of products from manufacturing plants, to depots, warehouses, retailers and finally, to the consumer. Therefore, procurement and sourcing are considered to form part of supply chain management process in order to complete the chain (Moeti, 2014).

In summary, based on the related definitions discussed above, the researcher contends that supply chain management involves all the activities of the entire virtual and physical processes starting from the product concept initiation which is a research and design (R&D) stage, extraction of raw materials to the point where the end product is delivered to the consumer. The process involves various stakeholders, which are linked by specific roles played in the whole value chain until the end consumers' needs are satisfied.

2.6 Public versus private procurement

The following two subsections will discuss major distinctions between private and public sector procurement approaches which in most cases is that the public sector performs mainly the procurement part of supply chain management.

2.6.1 Public sector procurement

Public procurement as defined by Moeti (2014) is buying of public services including works by the government from private service providers. Public procurement is not different from the practice of acquisition of commodities as it is done in private sector. However, in public procurement there are unique processes that makes it a bit different which will be discussed later. The above practice involves ensuring that the acquisition is executed with value for money as a principle, thereby affirming that products needed by the government are supplied at the right price, quality, place, quantity and time to citizens. Public sector SCM “procurement” involves seven elements namely, demand, acquisition, contract, logistics, disposal, performance management and risk fundamentals (the two later cut across the whole SCM system). Therefore, as confirmed by Arrowsmith (2010), public sector procurement is merely the state processes of buying services, works and goods that are required to satisfy citizens’ needs. Odhiambo and Kamau (2003) further agreed with the definitions provided above, that the government procurement is a process of hiring, obtaining or purchasing goods, services and construction works through contractual means. While Wittig (2007) asserts that public procurement is a government function that is information intensive, which usually involves issuance of tenders by the procuring entity using different procurement thresholds that are set by the country’s procurement authority. Furthermore, Bolton (2016:4) clearly describes public procurement as, “the purchase of goods and services by government or public entities to fulfil their various functions.”

In addition, Humphries and Wilding (2004) indicated that public procurement is a comprehensive process to get the services, works and goods that the procuring entity requires for fulfilling its mandate or needs. Some of the activities carried out in public procurement are to set up the quality standards (specifications of a product to be procured), financing options, price negotiation - not price chiselling which is a negotiation process that focuses mainly on reducing a price of a product ignoring other factors such maintaining product quality. There is also an activity of the actual buying of products, inventory control and disposal of unwanted products. Therefore, according to Korosec (2003), in an overarching supply chain management process, procurement ends once the institution is in possession of products; which indicates that procurement is one element of supply chain management and not a stand-alone discipline.

Based on the above definitions, one can deduce that different scholars define public procurement slightly different. One can further conclude that the majority of scholars have a common understanding of what public procurement is. However, all their definitions can be summarised into three main segments which is, philosophy in management, execution of philosophy in management and a series of processes in management of the government institutions; all in order to ensure that citizens get the best service delivery (Klemencic, 2006:13; Lambert, 2006).

2.6.2 Private sector procurement

Slightly contrary to public sector procurement above, Leenders and Fearon (2004:10) argue that private sector procurement is a systematic process that facilitates the entire synergy between raw materials, services and information as from the R&D stage through to the end consumer receiving the end product. In addition, Christopher (2005:5) further defines the private sector procurement

process as a proper downstream and upstream relationships management between suppliers, customers and other stakeholders in order to deliver enhanced customer satisfaction using reduced costs throughout the entire value chain. Furthermore, private sector procurement is a management of unified processes of acquisition across organisational boundaries in order to satisfy the end consumer as defined by Wisner, Tan and Leong (2008:8).

Putting together more than three organisations and linking them throughout a series of upstream and downstream movements of finances, information or data and services from the manufacturing plant to the end-consumer, is a definition given by Handfield, Monczka, Guinipero and Patterson (2011) for private sector procurement. The above definition concurs with how Christopher (2005:5) views private sector procurement. Fawcett, Ellram and Ogden (2007) added that, in order to maximise customer value and profits for each supply chain partner, effective and synergistic partnerships amongst distribution and supply chain associates are important.

Therefore, one can conclude that the above definitions are evidence that public and private procurements have similar objectives, which is to buy goods, services, and works for the end-customer or citizens. However, the processes and the environments within which goods, services and works are acquired differ per sector, as each sector's processes are differently regulated.

2.6.3 Private and public sector procurement differences

Based on the above sub-topic, it is proper to go deeper and critically analyse and compare the differences between private and public procurements. The most visible differences are the realities of market forces and competition which are applicable only to the private sector. Maximising profits is a daily order given to private procurement managers by shareholders, therefore private sector managers are expected to use procurement to minimise costs and increase profits, which is not the case for public sector procurement managers (McCue & Pitzer, 2005) as discussed below.

In public procurement there is no immediate threat of bankruptcy, unlike in the private sector, however the possibility of litigation due to following irregular procurement processes is very high. Andersson (2002) argues that public procurement managers operate in accordance with predetermined layers of acts, regulations and legislative procedures in each country, in contrast, the private sector procurement managers act in accordance with market forces and shareholder mandates. What makes matters more complicated is the existence of political pressures and influence, which usually tests the ethics of public procurement practitioners. To the contrary, in private sector procurement the overarching measure of performance is ensuring profitable procurement.

What differentiates public procurement from that of private sector is mainly the goal for each of these sectors; while the mandate of the government is to offer efficient public services, the private sector goal is mainly to maximise profits. Even though prescripts and legislative procedures are normally laid out clearly in public procurement, there is always a challenge to manage the possibility of corruption and fraud. Matters of financial maladministration, which mainly affects public procurement, are evident; hence, the public procurement system requires intensive monitoring and evaluation in order to have a successful public procurement process (Larson, 2009).

The practices and goals of public and private sector procurements make these sectors different. McCue and Pitzer (2005) confirm, while public sector procurement is regulated by the government statutory bodies through acts of parliament and public procurement regulations, the private sector procurement is governed by strategic vision and business plans approved by board of directors. Furthermore, taxes, surcharge fees and the government guarantees are used by the public sector to fund the government programmes; while revenues from the sale of products are used to fund the procurement processes that lead to maximised profits. Private sector procurement is distinguished by its unique utilisation of strategic procurement principles, which are however not fully implemented in public procurement due to some restrictive prescripts and legislative procedures (McCue & Pitzer, 2005).

Some of the unique features of the government procurement are the perception of less interest, high inventory costs, lack of proper logistics management, lack of confidentiality and the focus on keeping high tender competition (versus negotiations and quality) during the procurement procedures (Leenders, Fearon, Flynn & Johnson, 2002). These perceived characteristics lead to the lack of long term and collaborative relationships between public procurement managers and service providers.

It is therefore appropriate to conclude, based on related discussions analysed above, that it is evident that there are fundamental differences between the two procurement sectors because operational goals in these two sectors are totally different, that is profit maximisation versus excellent service delivery. It is accordingly appropriate that the researcher contrasts some features of private procurement against those of the public sector in Table 2.1 below.

Table 2.1. Public and private procurement dissimilarities

Feature	Private procurement	Public procurement
Objective	Profit maximisation	Effective and efficient service delivery
Revenue source	Sale of products	Fees and taxes
Governance structures	Board of directors	Legislature, judiciary and executive
Receptiveness	Innovation and encourages entrepreneurship	Transparency, accountability & socio-economic transformation
SCM view	Procurement as one of SCM elements	As a tool for procurement and one of the seven elements
Organisational structures	Less complex organisational structures	Highly complex organisational structures
Competencies	Practitioners are highly competent	Practitioners are less competent
Tactical partnerships	High tactical partnerships	Low tactical partnerships
Level of confidentiality	Levels of confidentiality are very high	Less confidentiality in dealing with stakeholders
Collaboration levels	Stakeholders have high collaboration skills	Lower stakeholder collaboration skills
Integration level	High	Very low
Technology savvy	Technology is highly utilised	Technology is less utilised
Level of implementation	Systems are highly implemented	Systems implementation level is very low

Source: Adapted from Ambe & Badenhorst-Weiss (2011a)

2.6.4 Similarities between private and public sector procurements

Despite having contrasted some features between the two procurement sectors, Lundvall, Tops and Olesen (2008) argue that there are important similarities that make the two procurement sectors somewhat similar. One similarity is that both sectors share the same goal when it comes to getting value for money in their respective procurement processes. Furthermore, where spending efficiency exists then the result is efficient organisational management, thereby realising an efficient value chain in both sectors. The qualities in private sector procurement of best, faster, cost effectiveness and quality control are also applicable to public sector procurement.

In real terms, similar pressures are exerted on both private and public procurement sectors as services, goods and works are still required to be of high quality. This is also evident when governments consider reducing their staff complement and outsourcing services through the tendering system, as it is the case in South Africa, which adds high costs to the wage bill. A typical example is the South African government which decided to reduce the high staff complement in the then Department of Works, which employed many artisans and construction professionals. The department was previously solely responsible for building and maintaining all public infrastructure (roads, schools, hospitals, and so on) which has since been outsourced entirely to the private sector through the tendering system.

There are three trends of change that are urgently needed in both procurement sectors (which makes them similar), there is a need to totally reengineer the procurement processes to speed up the procurement of goods, services and work, to reduce inventory holding costs and to improve liquidity of cash in both sectors (Oughton, 2007). Both sectors need to be more responsive to changes in the market, although the public sector has made some inroads in this regard, however more still needs to be done to ensure the public value is achieved in most procurement cases.

Around the world more efforts are being made to move to the fourth industrial revolution, where technological advances are embraced in order to survive in today's fluid and vulnerable markets. Both private and public sector procurements are pushed to adopt the technology innovations in order to avoid unnecessary costs and losses relating to inventory obsolescence and other operational requirements. The public and private sector procurement ought to strengthen transparency measures, while also ensuring that ethics are upheld for both sectors throughout all its business processes. Transparency is essential to have both private and public sector procurement operations as it is founded on genuine trust and distribution of sensitive information, for better beneficiation in terms of innovations, better profits and service delivery (Larson, 2009).

Therefore, as Larson (2009) contended, most public sector procurement operations are similar to those in private sector procurement, because citizens expect public services to be delivered cost effectively and faster, and so do the private sector procurement customers. Public sector procurement can achieve efficiencies by adopting some of the best practices used by private sector counterparts (lessons to be learned are discussed below) such as supplier relationship management, strategic sourcing and inventory control, while ensuring that acts, regulations and other public procurement prescripts are adhered to.

2.6.5 Learning good practices from private procurement processes

Lundvall et al. (2008) outline some procurement practices which can be adopted by public procurement from private sector in order to improve on its procurement efficiencies and these are as follows:

- **Communication**

Effective communication in any sector is of paramount importance; however, communication between public procurement practitioners and service providers is seldom satisfactory; flexibility for

service providers is prohibited because there is no allowance for alternative and innovative solutions on works, services and goods needed. Furthermore, public sector procurement authorities do generally not communicate what future tenders will entail.

In most cases, public sector procurement practitioners start to communicate with prospective service providers during the drafting of specifications, however after the advertisement of a tender, communication with service providers seldom happens (tender briefing session happen only if the procuring entity saw a need for it) or it does not happen at all. Accordingly, service providers find it difficult to clearly understand what public sector procurement managers require or the format for the services or products. Although the public sector practitioners sometimes hold pre-bid meetings to help clarify specific requirements, the public practitioners are not the experts in the industry so they are bound to miscommunicate or misunderstand the field of a specific product (hence the need for category managers). Due to the above poor or non-communication, most innovative service providers get frustrated with restrictive tender specifications and conditions, which sometimes stifle innovations (Lichere & Martor, 2007).

- **Flexibility**

Public sector procurement is known for its inflexibility when it comes to setting tender terms of reference, specifications and other requirements, as a result, service providers are sometimes unnecessarily restricted to suggest or propose alternative and innovative products to satisfy the citizens better and cost efficiently. The inflexibility of public procurement conditions makes it difficult for emerging suppliers to conduct business with the public sector. Generally, the private sector allows more manoeuvring space for innovative service providers to offer alternative proposals and in most cases; negotiations are key and are allowed. In public procurement, the opposite applies, negotiations are generally not allowed and they are seen as signs of corruption and fraud, so public procurement practitioner ought to be more flexible in order to ensure that the government derives value out of the money spent in procurement processes (Lundvall et al., 2008).

Emerging suppliers usually have low levels of trust in the government procurement system, as they are of the view that practitioners do not always uphold fairness when awarding tenders (Lundvall et al., 2008). Furthermore, the single-minded focus on price in the public sector means that the level of trust diminishes further, simply because in private sector attention is more on the best quality and best functionality of the product procured rather than on the cost alone. Should the emerging suppliers win the tender, chances of the bid process being taken to court for review by well-established competitors are high. Another hindrance is the extensive references required by public procurement, which prevent newly established emerging suppliers from offering their bids. This is a barrier to entry for new service providers who do not have experience and references.

- **Certainty**

There is a strong perception among scholars that the future tenders and procurement plans of the public sector are kept secret, thereby limiting the predictability on public sector procurement future tenders and needs (Lundvall et al., 2008). Prior investment in R&D is a prerequisite in some products and industries; this is because innovative service providers always strive to offer the best quality with efficient costs and this is only possible if service providers invest in advance to prepare for future tender requirements. As a result, innovative service providers are very reluctant to invest

in the future needs of public sector, as they cannot predict the future plans of government. Better predictability would assist the service providers to be better prepared for the forthcoming tenders so that they will meet all the requirements.

In most cases, service providers are surprised on seeing a tender in their field advertised by some public institutions, which makes it hard for them to tender their bids because the period given to submit a tender is generally less than 30 days. However, if public procurement managers declare their future needs and plans, most service providers would have had enough time to prepare for forthcoming tenders. One of the best ways to alert service providers about the future government plans and needs is through publishing of each procuring entity's annual procurement plans and then monitoring authorities (provincial and national treasuries) to ensure the procurement plans are followed through.

- **Performance reward**

Contract management becomes very important in every delivery stage of public procurement processes in order to afford the service provider an opportunity to improve its performance standards and private sector procurement excels in this regard. Performance rewards in private sector are far better than in public sector procurement hence the public sector can always learn from private sector. In private sector procurement, the buyer ensures that performance is constantly monitored to keep the service provider under pressure to deliver outstanding performance. Termination of contract or disruption of orders from a client is highly possible if service providers underperform, therefore prolonged relationships are beneficial to private sector procurement. If the service provider performs well, the compensation and contract termination date remains unchanged in public sector procurement, however, in private service providers who performs outstandingly there are high chances of getting contract extension and getting more purchase orders.

2.6.6 External and internal demands in public sector procurement

Private corporates still lead in procurement flexibility, rapid adoption of new and improved procurement technologies and adoption of new procurement methods. The main differentiator with public procurement is the fact that public procurement is required to conform and adhere to stringent acts, rules, regulations and prescripts governing public procurement of each country. Examples of these are the tendering directives issued by the European Union (EU) for EU member countries and another example outside of South Africa is in Zimbabwe, where the Procurement Act and Procurement Regulations governing public procurement (Erridge, 2005). Therefore, these prescripts serve as external demands to the government procurement.

How the difference between private and public procurement is viewed differ from scholar to scholar and country to country based on the amount of research and publications in public procurement. The execution of public and private sector procurement is influenced by various factors such as service delivery for public sector versus profits for private sector (Covington, 2006). The relationship between procurement managers and service providers is different in public and in private sector procurement due to the requirements of the acts, policies, regulations, rules and procedures which are mainly expected in public procurement. These requirements amount to an external demand aimed directly to the government sector operations. Accountability, transparency,

professionalism, competitiveness and responsiveness also differ between private sector and public sector procurement due to the value derived from each of the sectors (ITC, 2014). In short, one can argue that the differences between the two sector procurement processes profile the nature and range of demands found from each sector.

Because there are greater expectations (demands) that are evident in public procurement operations as compared to private sector operations, there is an immediate question that triggers one's mind: which demands are only found in private sector procurement and those only found in public sector procurement?

When trying to answer the above question, trying to consolidate the existing literature for clarity and summary purposes, one should examine the additional demands discussed below which are mainly found in public sector procurement (Arrowsmith & Trybus, 2003; Davis, 2005; Thai et al., 2004).

Among other external demands is transparency, which dictates that equal opportunities for contracting or tendering purposes are afforded to every interested individual and that all processes leading to contracts being awarded are publicised to the general public. Integrity and accountability are also important aspects in public sector procurement as they refer to situations where all government organisations and officials are held to account for effective, moral and legal compliance. This compliance helps avoid irregular, fraudulent, wasteful and corrupt expenditures. The government procurement officials' behaviour is expected to be exemplary in terms of effectiveness and efficiency in conducting procurement processes (Schapper, Veiga Malta & Gilbert, 2006).

On the other hand, internal demands are also evident where most public sector organisations have a range of internal goals, such as cost efficiency, good governance, among others. However, over and above internal demands, the government institutions are expected to meet external demands from citizens, such as fast electrification of their homes, building of clinics and roads among others, which is bound to conflict with their internal demands due to budget constraints and capacity to deliver (Schapper et al., 2006). Furthermore, the government institutions also have external socio-political demands to meet, where sometimes youth is kept engaged through musical practices by building community halls which sometimes are used to plan and execute some criminal activities under the pretence of community meetings (Premchand, 1993). Different objectives exist from various stakeholders in public procurement; such as the electorate, public office bearers, procurement officers, taxpayers who may possess different objectives. However, even if the objectives are the same, the interests may sometimes be different and even conflicted (Murray, 1999). An example of this conflict would be when there is a huge demand and need for community sewage treatment works but none of the citizens would agree that it be installed closer to their homes.

2.6.7 Private and public sector procurements: "two sides of the same coin"

As a summary analysis on private sector procurement versus public sector procurement, it is clear that these two sectors are similar in many respects, the main difference is the application of these concepts (private and public procurement), therefore, they are two sides in the same coin. Public sector procurement can learn or benchmark many best practices from private sector procurement, where some of the best practices can be modelled as is, or with a few modifications, in order for them to work well in the government settings. If the government procurement processes were to

focus on the three main functions of supplier relationship management, inventory control and strategic sourcing, efficiency could be realised in public procurement as a whole.

2.6.8 General nature and scope of public sector procurement

In most countries, the Finance Ministry is the custodian of public sector procurement and they develop laws, policies and regulations that govern public procurement implementation and operations. Public sector procurement sometimes is used to achieve socio-economic objectives, to ensure protection of the environment during the procurement process. It is also used to ensure fair labour practices, for reducing unemployment and encouraging participation of previously disadvantaged groups of society to bid for the government tenders. In addition to the above, Uyarra and Flanagan (2009) recognise the vital role played by public procurement specially in redressing the past political and socio-economic imbalances. The academic fraternity, professional bodies, government, procuring entities, private service providers and the society as a whole need to fully understand the entire government procurement process in order for the government acquisition to be economical and efficient and to ensure value for money in public resources (Odhiambo & Kamau, 2003).

The government and its institutions are mandated mainly to facilitate the rendering of public services through public procurement as smoothly as possible. The provision of health care, water, electricity, roads, harbours and many public goods and services involves the usage of public funds which automatically triggers legal contract management and public accountability in each and every public procurement process (Odhiambo & Kamau, 2003:10). Arrowsmith (2010) summarises public procurement as a planning of acquisition, contract management and administration, which ensures effective and efficient service delivery.

Therefore, many nations globally have finally recognised public procurement as a field that is entrusted with huge amounts of public resources. This further indicates that the government procurement is regarded as an activity that is subjected to corruption, fraud, maladministration and mismanagement of public resources. In trying to mitigate the above public procurement risks annual demand management and procurement plans must be linked to the overall strategic goals of each public institution, which in turn should be used as a long-term strategy to enhance and measure public procurement performance (Mahmood, 2010:103).

2.7 Public-Private Partnership processes

Processes relating to Public-Private Partnerships (PPPs) will be deliberated in the following subsections in order to highlight the importance of PPPs as one of the procurement methods available to governments for rendering public services.

2.7.1 Background to Public-Private Partnership procurement

Countries around the world are moving towards the incorporation of PPPs in their public procurement systems. PPPs are contracts between private business and the public sector, where a private business party agrees to use government property in order to perform functions that are ordinarily performed by the government, for example toll road concessions (to be unpacked further

below). Furthermore, the private business party agrees to absorb risks such as operation, financial and technical costs, and the private business party benefits from user fees, government budgets and government guarantees (Lichere & Martor, 2007).

Around the world there are three distinct forms of PPP which can be described as:

- A private business party performing a government function, getting paid by government and collecting service fees or charges.
- A private business party getting permission to use government property to advance its commercial interests.
- A hybrid PPP is also possible which combines features of both the above forms.

In addition, Lichere and Martor (2007) confirm that PPPs are a government-private business relationship whose aim is to undertake a specific project that will be used for the public good. In many cases, PPPs are used to build, finance and operate projects which serve the public, for example recreational parks, toll road concessions, roads and specialised hospitals for example, in KwaZulu-Natal there is Inkosi Albert Luthuli Hospital which is run under the PPP arrangement. Therefore, based on the above discussions, it is clear that putting a public project under a PPP can make a complicated and expensive project happen and be completed much quicker than a traditional public procurement (Dohrman & Aiello, 1999).

Based on the slightly different definitions of PPPs, it is important to distinguish between the projects undertaken through PPPs and outright privatisation, which is a process of a government procuring entity selling its assets and rights in their entirety to a private business party. Contrary to outright privatisation, in the PPP arrangement the government institution retains the ownership of its assets and some rights for the duration of a PPP agreement, for example, a private business party runs services at Inkosi Albert Luthuli Hospital, however the hospital remains the property of the KwaZulu-Natal provincial government.

What makes PPP more attractive to private business parties is that sometimes when a project involves large infrastructure development, the government will offer capital amounts in the form of subsidies, tax breaks, government guarantees and even one-off government grants. However, the government also has the option of transferring its existing assets to the private business party for the better execution of the PPP project, depending on the type of agreement (CIDB, 2006). In PPPs, the private business party is normally expected to create, operate, transfer skills and later handover the project or property back to the public sector.

2.7.2 Drivers of Public-Private Partnerships

In most cases there are two main drivers which propel PPP agreements, the first is to harness most of the efficiencies and expertise that the private business party brings to execute the PPP project efficiently (traditionally supposed to be procured by the government usually at a high cost and delayed completion) (Lichere & Martor, 2007). The second driver is that PPP agreements are organised such that it places the responsibility of borrowing squarely on the private business party, not on the government. In the case where the user-pay principle applies, the government views the PPP agreement as an off-balance-sheet method, which is used to finance the PPP project. However,

where users of the PPP projects do not pay (free public good), the public sector views the agreement as an on-balance-sheet project because the government will have to reimburse the private business party, furthermore, the government always benefits from the deferred cash flows of the projects (Dohrman & Aiello, 1999).

2.7.3 Public-Private Partnerships bear some advantages

There are several advantages that make PPPs beneficial to both the government and the private business party, such as the long-term view of PPP contracts as opposed to the short-term contracts in a traditional public procurement. In most cases, the risk is borne by the party within the PPP agreement that can manage it with less cost, thereby achieving value for money. In the PPP agreements, prices are benchmarked against the normal market forces thereby ensuring that the users are not overcharged or they can be subsidised. The delivery of a PPP project is normally predictable as opposed to traditional public procurement where the delivery date is usually not certain due to irregularities during the public procurement processes, where litigation is always possible (Dohrman & Aiello, 1999).

There is always sharing and cross-transfer of skills, expertise, knowledge and innovation, which can produce efficiency over a long period. In most cases, the private business party brings along the labour capacity and some valuable resources that would ordinarily not be available to the government. Political interference is usually excluded in PPP projects, which then ensures that any agreement is appraised based on its performance and thereby yields incentives for outstanding performance by the private business party (Grimsey & Lewis, 2007).

2.7.4 Public-Private Partnerships disadvantages

PPP agreements also have some shortfalls associated with their execution, such as when many parties are involved in the agreement it makes it difficult to manage, especially as each stakeholder has their own interests in the PPP project. As a result, there are usually complex negotiations and contracts with high legal costs. Sometimes, because of these complicated relationships, PPP projects take long to be handed back to the government to take over its operations. Sometimes the PPP agreements run over time because the government is not ready to take over the project, resulting into cost overruns. There are risks associated with the private business party making undue huge profits or becoming insolvent during the contract implementation, which might mean the project is cancelled or halted.

The prolonged PPP agreements and projects might mean that long-term debt will be incurred and benefits will be received very late. There should be a careful balance in terms of who must do the borrowing for the project, because sometimes the government can borrow much cheaper than the private business party can or vice-versa, hence the importance of the balancing act. Bearing in mind also that any capital expenditure incurred by a government might count against their future borrowing prospects at certain stages of the economic cycle (Knight, Harland, Tegen, Thai, Callender & McHen, 2007).

2.8 Corruption in public procurement and service delivery

2.8.1 General overview of corruption

In this part of the dissertation, the study aims to relate the impact of corruption (as it happens in public procurement) to service delivery. Devising methods to accurately measure corruption is not an easy task, as it starts by trying to define what corruption is. The biggest challenge in trying to measure corruption is to devise an all-inclusive definition which must be understood generally and consistently by everyone, this is because corruption means something slightly different in different situations, norms, standards, context and cultures (Transparency International, 2015).

In this study, the definition as described by Nwabuzor (2005) is adopted, where corruption is described as an immoral act of privately gaining or benefiting from the proceeds of using public resources. There are many types of corruption, the researcher will focus on three types. According to Rose-Ackermann and Palifka (2016), there is clientelism corruption, which is based on the notion of “give and take”, and it involves a patron and a client. The second type of corruption is grand corruption, which is based on no obligation to “give and take”, mainly this is where large-scale money squandering happens through well-connected elite individuals due to the deficiency of rule of law. The third type of corruption is state capture; where a few elite individuals control state institutions for self-gain at the expense of ordinary citizens, specific reference is drawn here to the State Capture Commission currently running in South Africa as it operates under the auspices of Deputy Chief Justice Zondo. It is public knowledge that the above three types of corruption are common in South African public procurement operations.

In an effort to measure public procurement corruption, Sarakinsky (2015) enhanced the corruption formula to read ***Corruption=(Monopoly+Discretion–Accountability)÷Ethics***; which then undermines development and erodes public confidence in government institutions to properly execute their constitutional mandates. For the purposes of this study, the corruption formula indicates that corruption is increased if people in public procurement have a monopoly and unchecked discretion in the decision-making processes. The formula also indicates that corruption further increases if we reduce accountability and divide the whole equation by minimal ethics. Government losses due to corruption often accelerate poverty as it deprives the most vulnerable and disadvantaged communities of much-needed public services. Instances of bribery and corruption often feature on the front pages of national newspapers, mostly detailing the government procurement processes flouted which makes corruption appear to be the norm rather than the exception in South Africa (Afrobarometer, 2016).

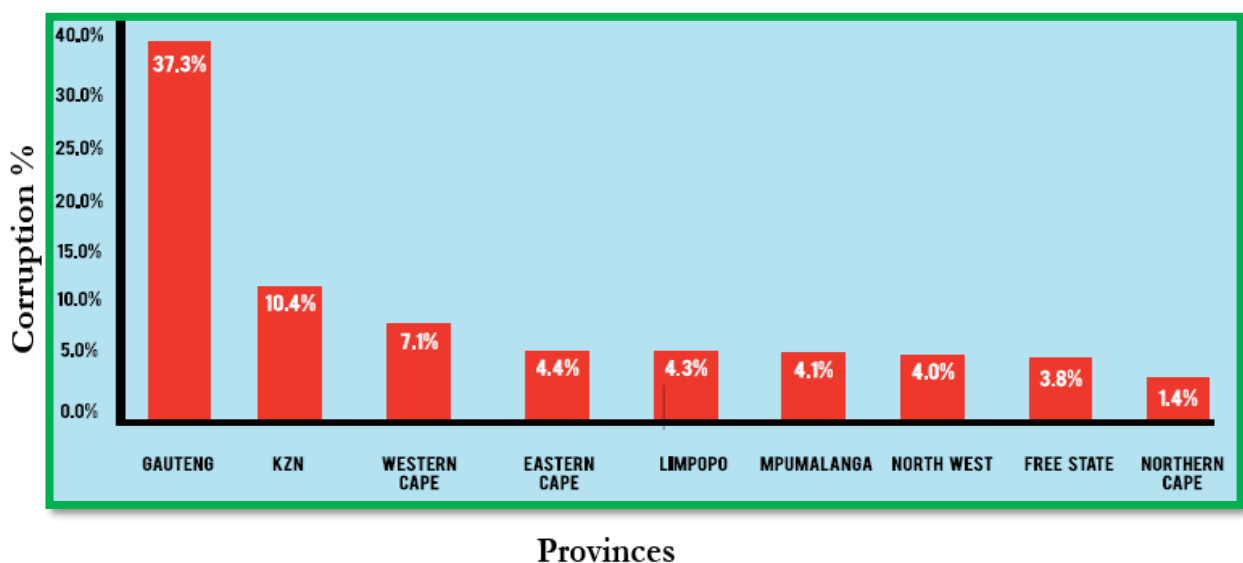
“The most problematic aspect of the Transparency International Corruption Perception Index (CPI) measure is that it measures perceptions, and perceptions do not always reflect reality” (Sarakinsky, 2015:193). As a result, Transparency International CPI data might not represent the true nature of the problem, and using this data would require the researcher to be analytical. “Supply chain and human resource management systems, as reflected in the government effectiveness measure, may be far more important in controlling corruption” (Sarakinsky, 2015). Therefore, by effectively emphasising supply chain management and effective human resources management systems, there could be more improvement in controlling or curbing the scourge of corruption. According to

Afrobarometer (2016), 51 000 people were surveyed in 34 countries for their opinion regarding their country's corruption perception. South Africa was a participating country and it showed that there is a rapid increase in perceptions amongst the public that corruption is escalating, particularly since 2008. However, in contrast, countries such as Mozambique, Zambia, Malawi, Senegal and Botswana were perceived to be in control of curbing the corruption scourge.

2.8.2 Overview of corruption in South Africa

The subsections below will discuss corruption as it specifically relates to South Africa and will break it down per province. Corruption Watch (2018) profiles three types of corruption common in South Africa, they are bribery, public procurement irregularities and embezzlement of funds or theft of government resources.

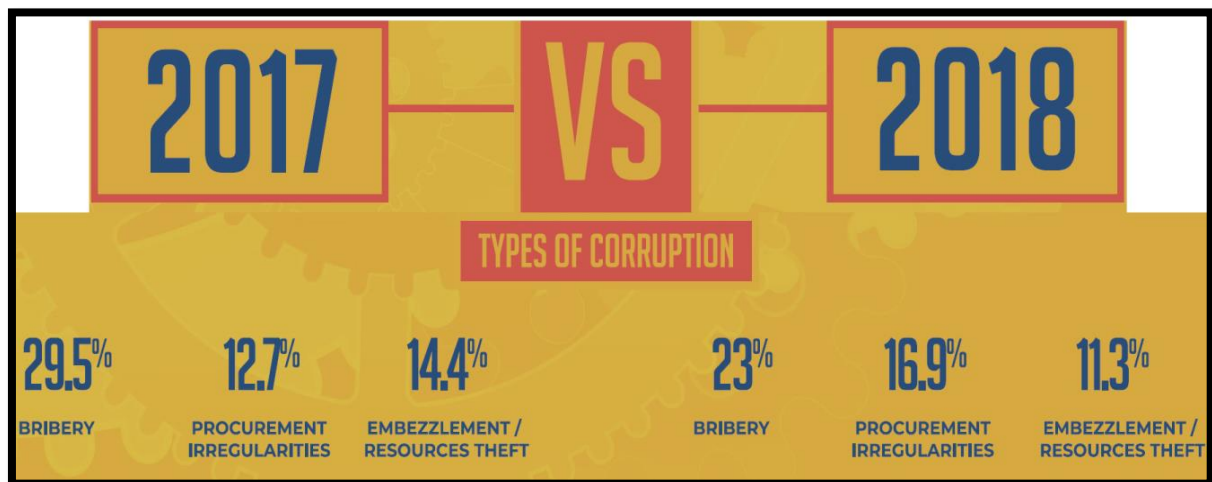
Figure 2.4 Provincial breakdown of South Africa's corruption: 2017



Source: Corruption Watch (2018)

According to Figure 2.4, Gauteng came up as the number one province for corruption in South Africa with 37.3 percent cases in 2017. Gauteng takes over from KwaZulu-Natal as the provinces which receives the highest proportional allocation of the national budget due to an increase in its population. KwaZulu-Natal was profiled as accounting for 10.4 percent of South Africa's corruption cases. Western Cape and Eastern Cape followed with 7.1 and 4.4 percent respectively. The above figures further indicate the big gap (almost 20 percent) between Gauteng and KwaZulu-Natal, the province next in line. What is notable with these two provinces, is that they are the provinces receiving the biggest budget allocation from the national government.

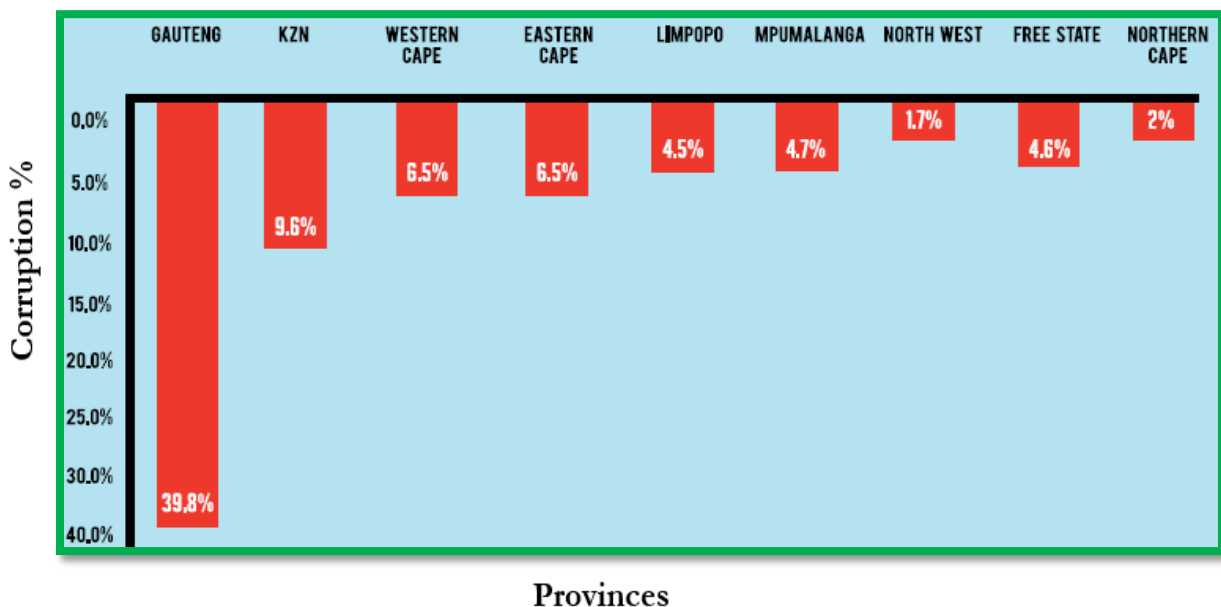
Figure 2.5. Consolidated high level South Africa's corruption – 2017 versus 2018



Source: Corruption Watch (2018)

Of the total corruption observed between 2017 and 2018 as per Figure 2.5, Corruption Watch (2018) profiled three different instances where corruption occurred the most in 2017. Bribery was the type of corruption which was reported as the most common at 29.5 percent across South Africa. Bribery was followed by public procurement irregularities across South Africa which accounted for 12.7 percent, this was closely followed by embezzlement of funds or theft of government resources at 14.4 percent. These figures indicate very clearly that the fight against corruption in South Africa is still far from over.

Figure 2.6. Provincial breakdown of South Africa's corruption: 2018



Source: Corruption Watch (2018)

Figure 2.6 above indicates that Gauteng has increased from 37.3 to 39.8 percent in terms of corruption cases monitored by Corruption Watch (2018); while KwaZulu-Natal has slightly decreased from 10.4 to 9.6 percent during the observed period (2017 to 2018). The Western Cape also slightly decreased from 7.1 to 6.5 percent; while the Eastern Cape had a huge increase of just

above 2 percent from 4.4 to 6.5 percent. Another province that made a significant decrease was the North West which dropped from 4 to 1.7 percent; while the Free State had a slight increase from 3.8 to 4.6 percent. The last two provinces had a long history of political instability and maladministration as some well-known criminal cases probing some public procurement irregularities are currently in court.

Relating to the 2017 corruption figures, a slight rise in corruption cases in South Africa is evident. As profiled by Corruption Watch (2018), the first two quarters of 2018 show an increase in some types of corruption. In terms of Figure 2.5 above bribery, which mainly has to do with soliciting funds from citizens by government officials had a slight decrease and accounted for 23 percent which translates to a nearly 6.5 percent decrease. Public procurement irregularities increased 4.2 to 16.9 percent; these irregularities included flouting public procurement legislation and processes. The third profiled type of corruption was embezzlement or theft of government resources which decreased 3.1 percent from the 2017 figures to 11.3 percent in the first two quarters of 2018.

2.8.3 Combating public procurement corruption

There are various definitions of corruption which mainly depend on factors such as culture, time, place and discipline. The definition of corruption by Rose-Ackermann (2013) indicates that corruption is to privately gain through the misuse of public office. With the adoption of democratic systems and processes in the South African government, there is progress in attempts to measure and curb corruption. The South African Police Service (SAPS), Public Service Commission (PSC) and Special Investigating Unit (SIU) are just some of government agencies that the South African government set up to help in the fight against corruption and they do have statistics to support this.

Gumede (2017) suggests that five strategies, among others, can be used to curb corruption. These five strategies should be adopted, as they directly relate to public procurement corruption. The first strategy suggested by Gumede (2017) is to instil constitutional values that are against corruption. For this strategy the South African government ought to start by making the constitution a highest law of the country in order to fairly prosecute individuals transgressing procurement laws. Related to this strategy would be to enforce witness protection programmes as it has been shown that citizens are not keen to come forward with information that will implicate authorities such as politicians (Sidimba, 2016).

The second strategy proposed by Gumede (2017) is to establish an independent “corruption-watch agency” vested with Chapter 9 powers like the public protector. The agency ought to monitor and curb the scourge of corruption in South Africa, especially in public procurement as it hinders accelerated service delivery. The third strategy relates to the support of citizens’ activism through transparency and free access to critical and useful information for better decision making, this is merely for government to make all procurement-related information or decisions public so that government procurement decisions can be scrutinised.

Gumede (2017) further proposes the fourth strategy which relates to intensifying lifestyle audits for public office bearers and government officials in charge of public procurement. It is suggested that the lifestyle audits will help in understanding how riches are accumulated. Together with the other strategies, lifestyle audits could be a success story to gradually curb corruption, especially in public

procurement (Pillay & Mantzaris, 2015). The fifth proposed strategy is to establish a demerit system of appointing public office bearers and government officials especially those officials in charge of public procurement processes. This strategy would go a long way towards curbing corruption when used together with public procurement professionalisation, where any public procurement official ought to belong to a professional body, which will disbar implicated officials from practising, especially in procurement units and in government as a whole.

2.8.4 Rule of law and public procurement corruption

The above conundrums facing public procurement which are compromising service delivery are a serious cause for concern. Therefore, some measures need to be taken urgently to restore citizens' trust in service delivery initiatives. As indicated by Nwabuzor (2005), the rule of law should be restored; all citizens in a democracy benefit from the existence of the rule of law. In this type of governance, no one is above the law including government executives and politicians. The judiciary is independent and as a result the quality of governance is increased which is beneficial to all citizens. When the rule of law is applied, there is a guarantee of law and order where the supreme law of the country is its constitution, in addition there is a guarantee of equality before the law.

In contrast, rule by law means that some elite connected individuals, politicians and government officials are above the law and cannot be held accountable to the law. Rule by law is a challenge to public procurement as elite individuals and politicians flout public procurement laws to suit their ulterior motives (Nwabuzor, 2005). In rule by law, there is judiciary bias and, as a result, the state quality decreases, which negatively affects all citizens. When rule by law is applied, there is no guarantee of law and order as constitution is not regarded as the highest law of the country and there is inequality before the law. The direct negative impact of rule by law on service delivery and public procurement is when a public procurement official resigns from one government department or institution because of public procurement fraud and scandals and then the same official emerges in another department to defraud the state again.

2.9 Good governance systems in public procurement

Good governance is regarded as an opposite of corruption for the purposes of this study, especially in public procurement processes. Fukuyama (2013:4) says that "governance is a government's ability to make and enforce rules and to deliver services, regardless of whether that government is democratic or not." A broader view of what good governance is provided by Bevir (2012), where he indicated that good governance is all governing processes; either undertaken by the government institutions or private organisations, through power, laws, norms and standards. Furthermore, Rotberg (2015) defines governance as the good performance of governments and the delivery of services through the rule of law. For this study, the focus was mainly on governing processes through public procurement laws to deliver widely needed public services.

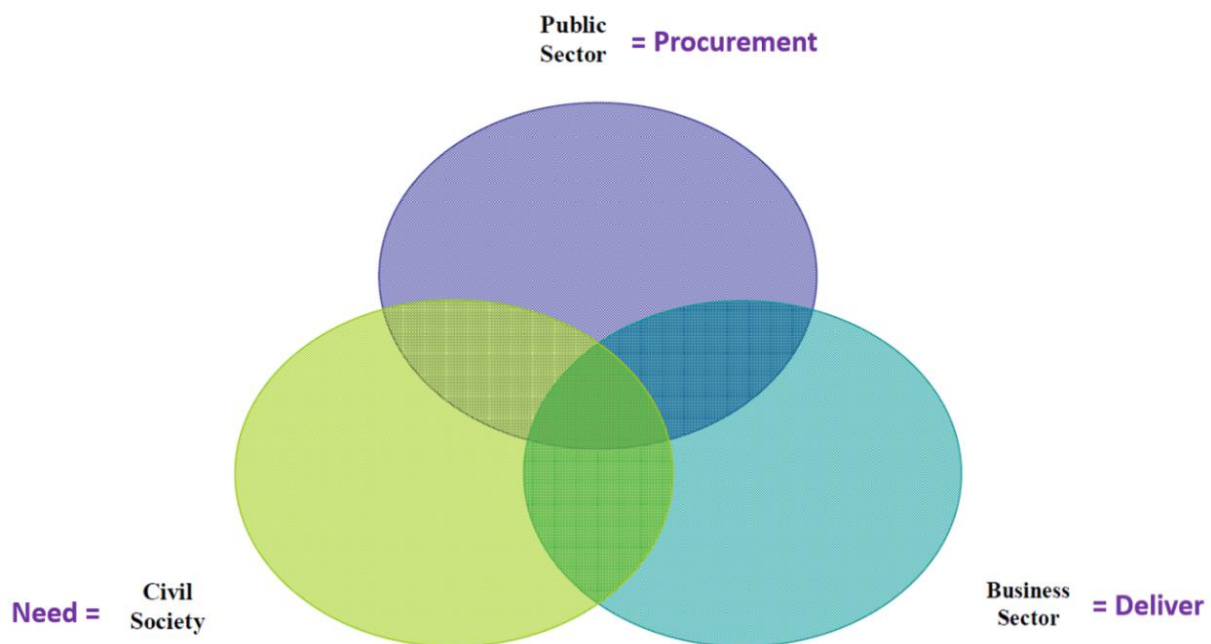
Good governance is an important pillar for accelerating service delivery through public procurement. For the purposes of this study, good governance is based on two related dimensions, which are described below.

The first one is political stability, where Heywood (1997) defines politics as, “the art of government to exercise control within the society through the making and enforcement of rules and collective decisions.” In reality, politicians are driven by certain socio-political beliefs or goals and they execute them through organising formal affiliations such as political parties. Therefore, political instability is a formula for poor governance leading to poor public procurement processes thereby hindering public service provision.

Heywood (1997) describes the second dimension as transparency, which ought to be participatory, equitable, effective, accountable and it must promote fair rule of law; especially when it relates to public procurement transgressions. It is in this context that good governance is important to ensure that societal, economic and political priorities are based on high-level citizen consent and the voices of the vulnerable and poorest members of community are considered when deciding public service allocation through public procurement.

2.9.1 Key role-players in any good governance

Figure 2.7. Key role-players in any good governance



Source: Adapted from UNDP (1997)

Fukuyama (2013) described good governance as a set of ordered rules to deliver public services systematically, this description fits well with public procurement in South Africa where there are many ordered rules that are used to procure goods, services and works. Good governance, or the process of governing in general, is one of the fundamental activities for ensuring effective and efficient service delivery. Through ensuring efficient service delivery, good governance encompasses the entire process whereby political and social power is configured and how power relations affect the conceptualisation and implementation of the technical processes involved in public procurement (Pieterse, 2002).

When analysing Figure 2.7, there is a strong interconnection between the government, civil society organisations and business sector in an attempt to reinforce good governance, which is critical for the successful procurement of public services. The interconnection revolves around, firstly, civil society (citizens) as the beneficiaries of public services and sometimes the private sector (business). The second pillar is the public sector (government) who procure goods and services for citizens and sometimes for the business sector. The third pillar is the private sector, which produces the goods, services and works the government buys to fulfil its main mandate of providing public services. The interconnection will be discussed in more detail below.

a) The public sector (government)

In Figure 2.7 on good governance, the state is portrayed as a main actor aiming to ensure facilitation and participation and to provide a conducive environment for other two key role-players (citizens and business sectors) to thrive. Government is an important body that acknowledges the autonomy and importance of the two other sectors and without suppressing them ensures good governance thereby facilitating smooth procurement of public services. The public sector serves as an enabler that provides the political stability and public procurement regulatory framework. The framework within which all other role-players can plan, act and receive public services and also to strengthen good governance principles. Most importantly, the state also acts as a resource provider that facilitates and assists communities and competitive markets to thrive.

b) The business sector (private sector)

If good governance is practiced properly, the business sector also serves as a connector between the government and civil society as government buys goods, services and works from business in order to provide public services. The business sector is an economic development agent for communities, as it creates jobs for the local residents, who in turn consume and pay for public services procured and delivered by government. Countries around the world are moving towards an incorporation of PPPs in their public procurement systems. PPP is a contract between a private business party and the public sector; where the private business sector agrees to use government property in order to perform functions that are ordinarily performed by government (Rotberg, 2016). Furthermore, the private business party agrees to absorb risks such as operation, financial and technical costs and they also benefit from user fees, government budgets and government guarantees (Lichere & Martor, 2007).

The state provides equal opportunities and safety nets for those businesses unable to compete openly, in the case of South Africa, there was an enactment of Broad-Based Black Economic Empowerment Act (BBBEEA) to close a gap of pre-democracy economic inequalities and address other socio-economic imperatives the government wishes to achieve through the public procurement (Constitution: s217(2)). As such, the 80/20 preferential system gives government power to pay as much as a 25 percent premium to a bidder that is Broad-Based Black Economic Empowerment (BBBEE) compliant compared to a non-compliant supplier, while the 90/10 system sets the premium at 11.1 percent. The participation of civil society and the business sector in good governance serves as an added advantage for the public sector, which formulates linkages and partnerships between the two sectors. In addition, the role of the state moves the social dimension to active citizenry from being controlled by a few elite individuals with powers of authority.

c) Civil society (citizens)

Civil society comprises of a multifaceted set of citizens' groups and/or organisations outside the government, yet working for the public good. It involves non-governmental organisations (NGOs), sometimes also called third sector (UNDP, 1997). The broader civil society is made up of the academia, NGO's such as SANCO in the case of South Africa.

The civil society sector mobilises various organisations or groups in a community to contribute in the decision-making processes and future planning of any country. Some NGOs take the government to court as the government fails to adhere to its public procurement policies (Sidimba, 2016). As a matter of public knowledge, the government loses the majority of such litigations. The above are some of the important roles of civil society in ensuring good governance in public procurement through advocating for quality service delivery and ensuring that the government is accountable.

Therefore, it is important to recognise and appreciate the coexistence of the government, private sector and civic society in order to ensure the good governance that will ultimately ensure effective and efficient delivery of public services in an emerging country such as South Africa.

2.9.2 Good governance and service delivery

Public institutions are expected to uphold the principles of fairness during any public procurement process and they are expected to make available legal recourse in case there are breaches of good governance. For the purposes of public procurement, good governance ensures basic procurement pillars, which are accountability, transparency, fairness, integrity and equitability in public procurement. In most countries, public procurement is regarded as an administrative activity up until the contract is signed between the two parties, which are the government and the service provider then the agreement is in turn managed under the contract law principles. Therefore, in most public procurement transactions the doctrines of both private and public laws apply (Roos & De la Harpe, 2008).

Public sector procurement performance is in most cases under pressure to demonstrate good governance (McAdam et al., 2005). More interest and special attention is given to reporting and performance measures by various public procurement entities to ensure increased accountability and improved performance (Berman & Wang, 2000; Barry, 2000). In order for government to improve performance there should be a review on how procurement planning is done. Furthermore, reviews on how budgets are done and to ensure that annual procurement plans are linked to budgets and adhered to. Many countries around the world, such as New Zealand, Zambia, South Africa and Britain, have instituted public procurement reforms in order to improve performance. Therefore, principles of change management are important for good governance in public procurement (Boyne, 2003).

In order to ensure good governance in public procurement performance monitoring must be improved. Public procurement has various performance measures in place which are used in the 21st century such as the Supply Chain Operations References (SCOR) model, the Balanced Score Card and benchmarking (Handfield et al., 2011). Where SCOR is mainly utilised as a procurement

benchmark and a tool for process improvement in procurement operations to achieve efficiency, which the government can easily adopt (Wisner et al., 2008). Furthermore, the Balanced Score Card is used mainly to ensure that there is alignment between the procuring entity's performance, goals and strategic plans. The benchmarking tool is widely used around the world in most industries to improve performance, thereby ensuring good governance, which can be easily adopted in public procurement operations (Wong & Wong, 2008).

Barry (2000) confirms that public sector good governance principles increase effective and efficient procurement system, thereby enabling government to render service delivery to the citizens timeously at the correct time, quality and quantity. Good governance principles help to ensure the achievement of continued improvement in managing total cost and quality, which ensures that government derives value out of the money spent on procurement. Furthermore, good governance principles ensure the development of excellent procurement systems with standardised policies, tendering procedures and contract administration across all government spheres, that is, national, provincial and local governments. There is control and accountability through comprehensive auditing of the procurement processes in most emerging nations. Furthermore, there is a compulsory compliance with the provisions of the applicable procurement legislation under good governance principles. It also ensures consensus within public procurement reforms, and ensures adoption thereof by all public procurement agencies, thereby ensuring public procurement good governance principles; which lead to improved service delivery.

2.10 Public procurement and societal inequalities

“BBBEE and other government empowerment policies are ineffective, most South Africans (85 percent) gain nothing from these policies”, reports the Institute of Race Relations (Jeffery, 2016). As supported by Webster (2017) that, since the beginning of democracy, inequality in the South African population is growing each year. Webster indicated that, since the early 1990s, South Africa had the highest Gini coefficient (at 0.66) out of 57 countries surveyed and currently it has grown to 0.696, where Gini coefficient (measured as a full 1) is the study of how wealth or incomes are distributed among the country's residents. If the Gini coefficient increases, the inequalities also increase.

As indicated earlier, procurement of goods, services and works by government was around R900 billion during 2017/18 (National Treasury, 2018). This type of expenditure grows each year, yet to date, the majority of government contracts still go to “untransformed” companies. Eskom and South African Airways (SAA) still keep evergreen contracts with untransformed companies who are not supporting government BBBEE initiatives and government seems to be going at a snail's pace in addressing this anomaly of inequality. In the researcher's view, this perpetuates economic inequalities in South Africa.

In terms of the above authors, there is a strong belief that the government is not doing enough with BBBEE, which is said to have failed to produce what it was meant for; rather it produced a few rich individuals thereby increasing South Africa's Gini coefficient (Bhorat, 2015). Using public procurement to redress the past imbalances is allowed under the Constitution s217 (2) and (3). Therefore, the government can still do more in exploiting the above constitutional provision.

Many developing countries, especially those previously colonised, or with apartheid such as South

Africa, have included in their constitutions that public procurement must be used in order to redress systemised past imbalances in economic opportunities (Freund, 2007). There is a widespread public perception that the 20 and 10 points allocated for BBBEE preferences in government tenders is too little to amend the socio-economic past imbalances and they need a complete overhaul.

Jeffery (2016) in the Institute of Race Relations report says, “BBBEE does little to develop black entrepreneurship or contribute to wealth creation.” Historically privileged companies still obtain government contracts based on the 80 and 90 points for price only, as these companies have the requisite operational infrastructure and financial strength to compete on lowest bid prices only without BBBEE points. Only 5 percent of the surveyed Institute of Race Relations’ respondents felt that more BBBEE or employment equity will help improve their lives (Jeffery, 2016). Therefore, the government needs to seriously relook at s217 (2) & (3) of the constitution as BBBEE definitely did not work (Bhorat, Van der Westhuizen, & Jacobs, 2009).

The government can help “black” emerging businesses to deliver what was procured from them until they are on a par with previously privileged companies. As government is allowed to pay a 11,1 to 25 percent (premium) over and above the lowest price in order to reduce socio-economic past imbalances (National Treasury, 2004:27).

2.11 Case study: public procurement in selected African countries

This part of the dissertation will observe at a high level the background, challenges, public procurement regulatory environment, public procurement reforms, generic procurement processes and procedures for the three African countries selected, namely: Kenya, Zambia and Zimbabwe.

2.11.1 Main reasons to study public procurement processes in Kenya, Zambia and Zimbabwe

Since South Africa is in the same region as the above countries, according to the views of the researcher, it is prudent to do a high level study of their public procurement processes with the aim of learning from them. Some of the reasons that compelled the researcher to undergo this African study were because, while these countries are ahead of South Africa in terms of public procurement reforms and processes, there are some similarities. The first reason was that South Africa does not have an act of parliament which specifically deals with public procurement and yet the three African countries had public procurement acts, as far back as 1978 in the case of Kenya. The public procurement act was introduced in Zimbabwe in 1999. The South African PFMA is generic public financial management legislation that does not focus on public procurement.

The second reason that compelled the researcher to study these three African countries was that some of these countries have started adopting e-government and e-procurement technologies, as far back as 2000 in the case of Kenya. It is public knowledge that South Africa does not use e-government and e-procurement technologies, currently it only has an electronic central suppliers’ database (CSD) which is nowhere near being e-government and e-procurement. The third reason was the fact that South Africa does not have an independent and impartial public procurement regulator which all three of these countries already have. These three case studies will examine the significance of reforms, accountability and transparency in public procurement towards ensuring government derives value out of the money spent in procurement. These are some of the main

reasons why this part of the literature review was conducted to highlight how much reforms the South African public procurement ought to undergo; in terms of legislation paradigms, innovation and the use of modern technology in comparison to the three African countries studied below.

2.11.2 Public procurement: Kenya

a) Background

The Kenyan public procurement system started with the Supplies Manual of 1978 (Manual), during its application, directives and circulars were periodically issued by the Kenyan National Treasury in order to supplement the Manual (Quinot & Arrowsmith, 2013:109). The Manual provided for the position of the Director of Government Supply Service, a procuring authority throughout the country, who was mainly mandated to ensure that there was adherence by all government procurement entities to the Manual's provisions. There were various tender boards created as per the Manual to oversee the adjudication and awarding of various tenders (PPOA, 2007).

There were several challenges in public procurement for Kenya which triggered reforms to the system. Among the challenges was that there was no uniformity in public procurement. Other than internal disciplinary action within a specific government institution, the Manual did not suggest punitive measures or sanctions against transgressors who flouted its provisions (PPOA, 2007). As a result, there was no consistent application of the rules, norms and standards of the Manual. Furthermore, construction projects were not covered in the Manual's procedures. The Manual had weak and unreliable mechanisms responsible for public procurement dispute settlement for transparency and fairness purposes. Suspicions of dishonesty of tender boards were evident because records management processes were very poor as some procurement records were incomplete and some were inaccurate. Therefore, the society had suspicions and lost confidence that the government derived best value for money during public procurement (PPOA, 2007).

Due to the shortfalls contained in the Manual, the Kenyan government saw it fit to enact the parliamentary Act in order to give overall guidance on how the government procurement should be conducted. The parliamentary Act was also necessary to ensure that a public procurement authority was created to observe the execution of the provisions of the Act. As a result, the Exchequer and Audit Regulations of 2001 were established; which then paved the way for the Public Procurement Directorate (PPD) to be established, as an interim measure (PPOA, 2007).

The PPD and Public Procurement Administrative Review Board (PPCRAB) mainly relied on the Ministry of Finance for its operational requirements, which included employees, budgets, facilities and reporting structures. Because of this arrangement, these institutions lacked the independence and impartiality that they ought to have. In trying to close the independence and impartiality gap, the Public Procurement and Disposal Act of 2005 was promulgated which ensured that the Public Procurement Advisory Board (PPAB) and Public Procurement Oversight Authority (PPOA) were created and made to be autonomous bodies. In terms of the above legislation, the PPOA was given the mandate to check and guide the execution of the provisions contained in the act by all procuring entities throughout the country. The PPOA was also responsible for initiating the public procurement policies, preparing and distribution of manuals, circulars, directives, standardised tender documents and ensuring proper advises to the procuring practitioners. The PPOA was also mandated to carry out professional development and training of all public procurement practitioners

in the country (PPOA, 2007).

b) Legislative framework

The Kenyan government ensured that the Public Procurement and Disposal Regulations of 2016 (Regulations) were promulgated using the provisions contained in the Public Procurement and Asset Disposal Act of 2015 (Act). Consequently, there were regulations that gave more detail on public procurement processes and procedures which govern public procurement in Kenya. In terms of the above legislation, all public procuring entities are required to comply when planning any procurement, budgeting, inventory management, contract management and asset disposals. Unless otherwise stated clearly in the Public Private Partnership Act of 2013, the provisions of the above 2015 legislation would not be applicable. Furthermore, the 2015 legislation provides for the National Treasury to be the overseer and the custodian of asset disposal and public procurement policy formulation.

There was an establishment of a set-aside policy of 10 percent, whose threshold was later increased to 30 percent of public procurement and it is called Access to Government Procurement Opportunities (AGPO). The set-aside policy gave effect to awarding public procurement tenders to disadvantaged groups of society which included enterprises owned by woman, disabled persons, youth and others without any competition from well-established enterprises. Enterprises regarded as small and local were also given preference including foreign enterprises collaborating with local service providers (Ngure & Simba, 2013).

c) Kenyan procurement processes

Previously, public procurement in Kenya has been makeshift without any proper regulations for decades before it started to evolve into a modern, orderly and legally regulated public procurement process. The summary of processes used in Kenyan public procurement are summarised below.

Preparation of procurement specifications

Specific bidders should not be favoured by the terms of reference or the specifications drafted to procure any product, therefore specifications should be drafted as neutrally as possible. The success of any procurement of goods, services or works is dependent on the proper drafting of the specifications and terms of reference in order for bidders to understand the requirements in a specific assignment. Therefore, specifications or terms of reference should be drafted by experienced and qualified officials, which can include the user-department (technical) official being assisted by an official from the procurement unit of a procuring entity. If evaluation criteria, terms of reference and specifications are properly drafted it should take into account the total cost of ownership as per procurement regulations of 2016.

Open tendering method

The Act provides for, among other methods, open tendering, which is widely used in Kenya, however where an open tender is not feasible or appropriate, there is a provision under Part VI of the Act which gives permission for alternative procurement methods. While an open tender might

not be used, in order to ensure transparency and fair competition, the specifications must be drafted in a manner that encourages a perfect and correct description of the product required. Bills of quantities, architectural maps, designs and plans must be included in the case of construction works, however no brand names and trademarks are allowed unless it is unavoidable, in that case it should be followed by the phrase “or equivalent” (as practiced in South Africa).

In a case where an open tender is not an appropriate method of procurement as per the Act, restricted procurement methods can be used if an acquisition was included in the procurement plan of a government institution. The restricted procurement method can only be used if there is limited competition in the market, or if the product is specialised and complex to procure. Furthermore, also only if the cost and time needed to evaluate and examine a bulk of bids received would not be proportionate to the actual value of construction works, services and or goods needed and there are only few suppliers in the market. If an open tender is not possible, therefore, a procuring entity can use the alternative procurement methods as permitted by procurement regulations of 2016 and some details are discussed below.

i. Direct procurement method

In the few exceptions to adhering to competitiveness principles, the procuring entity is entitled to use direct procurement method. Furthermore, the conditions of using the direct method are when there is only one single supplier in the market who can provide the product. If there is an urgent need for a product, the direct method can be used, provided that the urgency was not foreseeable and not because of the procuring entity’s negligence.

ii. Request for quotations method

Provided that the goods, services and works are readily accessible through a competitive market and they meet the bidding requirements stipulated for the procurements under request for quotations (prescribed minimum and maximum for quotations are promulgated periodically by authorities). At least three service providers will be invited to submit quotations using the prescribed request for quotations from within a specified period.

iii. Request for proposals method

The request for proposals method can be used, provided that the goods to be procured meet the requirements stipulated for procurements under request for proposals (prescribed minimum and maximums for quotations are promulgated periodically) and that product to be procured are of advisory or mainly intellectual or consultancy nature.

iv. Procedure for low-value procurements

It is a requirement that any procuring entity must satisfy the conditions set out; where the procured value of products must meet the requirements stipulated for procurements under low-value procurements (prescribed minimum and maximums for quotations are promulgated periodically). Conditions of petty cash can be considered as an appropriate method under this procurement procedure.

v. Specially permitted procurement procedure

Permission must be sought from the PPOA in order to use a specially permitted procurement procedure; the request for permission must meet requirements for example, bids of the creative design competition or concession nature. In these types of bids, some services must be carried out first as critical part in the bidding process to enable the bid evaluation committee to determine the winner, issues such as sample bidding, architectural services, urban design projects, fine arts, engineering, landscaping and other related products.

2.11.3 Public procurement: Zambia

a) Background

Policy makers in the Zambian government ensured that the Public Procurement Regulations of 2011 were established under the strict provisions of the Public Procurement Act, which was promulgated in 2008, under the auspices of government entity called Zambia Public Procurement Authority (ZPPA) which operates as an autonomous regulator mandated to regulate procurement of services, goods and works in Zambia. Public procurement in Zambia has aggressively resolved to venture into e-procurement as it is expected to yield many benefits, like reduced opportunities for corrupt practices. Furthermore, participating in Zambian public procurement will be cheaper, and bidding processes will allow international bidders to bid for government tenders while abroad. In addition, the e-procurement will be empowered with functionality of e-agreements to ensure that every contract entered into with the government of Zambia is executed speedily and efficiently to expedite service delivery. However, there are concerns that some of the stakeholders and local service providers are in deep rural places where there is no internet and other necessary technologies like the strength of broadband connectivity for a faster and uninterrupted connection (Kayonde, 2015).

b) Legislative framework

ZPPA regulates all public sector procurement operations in Zambia, ZPPA was established in line with provisions contained in Public Procurement Regulations of 2011 (Regulations) and Public Procurement Act of 2008. Before 2008, the National Tender Board Act of 1982 regulated all public sector procurements throughout the country. ZPPA is now an impartial and independent regulator mandated to regulate all public procurement of services, goods and works by all government entities. Contracts entered into by procuring entities are supervised by ZPPA, to ensure transparency, accountability and maximum competition during the bidding process and monitor the execution thereof to ensure public funds get public value. Unlike in Zimbabwe, where the Zimbabwean State Procurement Board (SPB) monitors contract management, the ZPPA does not monitor the contract management.

c) Zambian Procurement processes

In Zambia, there are different procurement methods and procurement requirements to be used and met by all government institutions, which are regulated by Public Procurement Regulations of 2011, and some of these methods are outlined below.

i. Simplified bidding method

The simplified bidding method is used if the requirements satisfy the conditions set out in the regulations; where the procured value of products must meet the stipulations for procurements of low-value products as prescribed maximum currently being K500 million. Conditions of petty cash can be considered as an appropriate method under this procurement procedure, where the off-the-shelf products are purchased. At least three service providers will be invited to submit quotations using the prescribed request for quotations from within a specified period. There is also a procurement method called open bidding which is a preferred method of procurement in Zambia, this method is mainly used for high-value acquisitions being any value higher than K500 million. This method requires that a procuring entity advertise any tender opportunities in the government gazette, newspapers and other media. The Central Tender Committee of Zambia and/or a Procurement Committee must be consulted for authorisation before a tender is awarded to ensure transparency and to avoid corruption.

ii. Limited bidding

If the products to be procured are kept by few service providers, when there is an urgent procurement for certain specialised products, or it is impossible to procure through an open bidding method, then procurement entities are allowed to use the limited bidding method. Once again the Central Tender Committee of Zambia and/or the Procurement Committee must be consulted for authorisation before a tender is awarded to ensure transparency and to avoid corruption, this is where an invitation is only extended to limited preferred service providers.

iii. Direct bidding

Direct bidding is mainly used when the procuring entity needs to ensure compatibility with the existing components of the product to be serviced. This is further used to ensure standardisation or continuity of products within a value chain or similar operations. If the products to be procured are only available from a single service provider this tender is not advertised, or if product value reaches prescribed minimum and maximums for direct bidding, which are promulgated periodically through Regulations.

Furthermore, direct bidding is used when there is an urgent need for certain specialised products, thus they are impossible to procure through the open bidding method. Consequently, procurement entities are allowed to use the direct bidding method. In order to avoid corruption and ensure transparency the Central Tender Committee of Zambia and/or Procurement Committee is consulted for authorisation before a tender is awarded as the invitation is limited to the preferred service providers.

iv. Force account method

The force account procurement method is used when conducting construction procurement, whereby the procuring entity is allowed to use its own equipment and employees, because the work to be executed must not disrupt the ongoing operations, the procuring entity cannot forecast the

future needs (meaning the need arises as an emergency or an urgent need). This method is also used when the construction job to be done is not in one central point or it is scattered in remote rural areas where private business would be reluctant to bid with a reasonable market price.

v. Purchase from other state institutions

This is an unpopular method of procurement, where a procuring entity procures from another government entity because it is cheaper and reasonable to buy from another procuring entity rather than buying from a private firm while the other entity can meet all the requirements. There is also a related method that is called community participation method, where, in the interest of utilising local labour expertise, labour intensive mechanisms, achieving some government socio-political objectives and ensuring the sustainability of the project, non-governmental organisations and local communities are invited to participate in this bidding method. Furthermore, there is also a procurement method called PPP where a private business party agrees to use government property in order to perform functions that are ordinarily performed by a government sector, for example, toll road concessions operated as per the Public-Private Partnership Act of 2009. Government procurement in South African operations is still in its early stages for implementing this type of procurement.

vi. Preferential procurement method

Kayonde (2015) states that “Certain procurements may be reserved for a targeted group, such as enterprises owned by women, local bidders or small enterprises. Statutory Instrument 36 of 2011 provides for preferential procurement, as it divides service providers according to their shareholding, including citizen-influenced (5–25 percent owned by locals), citizen-empowered (26–50 percent owned by locals) and citizen-owned (50–100 percent owned by locals). Prices submitted by service providers who meet the requirements of a preferential procurement system are given discounts within regulated margin limits in order for these service providers to get an added advantage when conducting price evaluations.”

Zambian tender notices

The procurement unit of every procuring entity advertise tenders through the Ministerial Tender Committee; all tender advertisements are required to include details of date, time and place of tender closing. Details of where and when can tender documents be obtainable, mode of tender submission, the rejection and acceptance of tender conditions, clear details of the products that are procured and evaluation criteria including quantities required. The Regulations require that a procuring entity advertise any tender opportunities on a government gazette, newspapers, its website and other media through the ambits of ZPPA norms and standards. Service providers are given enough time (about six weeks, depending on the nature and complexity of a procurement method chosen) to prepare their bid documents for submission. In most cases, public tenders are open to include even foreign service providers.

Zambia's first public e-procurement

According to ZPPA, a regulatory body entrusted with the task of managing large numbers of procurements for government departments, public entities and local authorities has advanced to introduce e-procurement systems in the country.

In Zambia, e-procurement ensures that prospective bidders get access to tender opportunities whether residing within the country or abroad. e-Procurement ensures that public sector procurement legislation compliance is adhered to; thereby preventing service providers or procuring entities from deviating from the procedures set out by ZPPA (Kayonde, 2015).

e-Procurement ensures that there is a reduction in cases of fraud and corruption. Also it is less expensive as hardcopy bid filing was required for the centralised traditional system, requiring participants to pay for lodging in, and transport to, the capital, Lusaka. Besides public procurement, the e-procurement system will also be accompanied by e-agreements to ensure efficiency among public procurement stakeholders.

However, there are concerns that some stakeholders in deep rural areas will fail to bid due to non-availability of internet facilities in those areas. Some critics indicate that most of the service providers cannot access the internet and computers in order to participate in the e-procurement system.

2.11.4 Public procurement: Zimbabwe

a) Background

There is a high centralisation of public procurement in Zimbabwe. State Procurement Boards (SPB) govern and administer public procurement. SPBs were created through the Procurement Act 2 of 1999. Dzuke and Naude (2015) indicate that public procurement in Zimbabwe is coupled with some challenges, ranging from delays in procurement processes due to SPB processes, such as the threshold of \$50 000 and above for tenders which must go through an SPB. Corruption and insufficient market research as required by the procurement prescripts of Zimbabwe were among the challenges identified. Political influence, incompetency of SPB panel members, procurement centralisation are further challenges identified by (Dzuke & Naude, 2015). There was also an indication that the indigenisation policy in public procurement leads to tenders being awarded to incompetent service providers and 10 percent of tenders must be awarded to local service providers not to non-Zimbabwean service providers. Furthermore, non-recognition of public sector procurement as a service delivery strategic function, lack of professionalisation of procurement and poor management skills are among other challenges currently facing public procurement in Zimbabwe.

b) Legislative framework

Public procurement and service delivery are affected by different legislative regulation around the world, which in most cases affects any government overall performance. In the case of Zimbabwe, procurement is governed by two important prescripts namely, the Procurement Regulations of 2002 (Regulations) and Procurement Act 2 of 1999 (Act). Where the Act gives an overview of the

framework and Procurement Regulations gives details of the public procurement procedure and processes in the country (Zimbabwe Government, 2002).

The public procurement in Zimbabwe is highly centralised, with the SPBs governing entire processes in public procurement. The SPBs were established, with the provisions of the Act under Section 4, with a specific mandate to manage and regulate all procedures, norms and standards relating to public procurement in all public procuring entities in Zimbabwe including local governments.

c) Procurement processes in Zimbabwe

According to Dzukey and Naude (2017:3) the public procurement stages below are set out in the Regulations, some of the public procurement cycles, norms and standards are also set out for procuring entities to follow, and in summary, the stages are discussed below

i. Preparation, stage 1

Planning of the procurement process includes ensuring that any procurement threshold above \$50 000 goes through an SPB which does not currently have the technical capabilities to execute the approvals on time (it can take more than 16 days). Generally, the procurement unit and technical experts (usually user-departments) prepare the Request for Proposal (RFP) documents for approval by SPB (Dzukey & Naude, 2017:3).

ii. Advertising, stage 2

Publication of procurement tenders is said to be in line with Regulation 8 and 10. SPB makes all the decisions relating to the closing dates of every formal bid issued. Regulations indicate that all formal tenders must close not less than 30 days after advertisement, unless the SPB grants an approval for deviations. In terms of Regulation 8, the government gazette, which is published every Friday, must be used to advertise all public tenders in Zimbabwe. Musanzikwa (2013) alludes that the major delays are with the SPB which takes too long (45 days on average) to approve the RFPs, which delays service delivery.

iii. Bid evaluation, stage 3

After the bids are submitted on the closing date, SPB takes around seven days to indicate if the documents are well sorted and ready for collection and therefore invite the relevant procuring entity to collect the received documents from bidders. The SPB takes around six weeks to sort out the received documents, which is another unnecessary delay in service delivery. In most cases, when procuring entities execute their duties during the evaluation of tenders, the main focus is always on meeting all minimum specifications, sometimes this process leads to non-competent service providers being awarded contracts. Merely because some service providers can manage only to fill in the administration and compliance part of tender documents, however, these service providers have little or no capacity to execute all contractual requirements (Musanzikwa, 2013).

iv. Award, stage 4

In terms of Regulation 21 notifications of contract awards take place around 14 days later and contract signing within 21 days. The appeals procedure starts within 20 days as per Section 43 of the Act and can last more than six months, which is another unnecessary delay. In order to ensure transparency and fairness in procurement, after six months, the tender might have to be restarted as the normal validity period has expired, meaning that the prices offered are no longer valid.

v. Contract management, stage 5

Regulation 26 indicates that management of the contract should be done properly to ensure that contract performance, delivery and completions are carried out on time to effect payment. However, there is a great concern that SPBs are not playing any pivotal role in contract management and procurement auditing in order to ensure that all processes go according to procurement prescripts, as required by the Regulations (Dzuke & Naude, 2015).

2.11.5 Key lessons from studying public procurement in Kenya, Zambia and Zimbabwe

Based on the three countries studied, it was clear that South African public procurement is lagging behind its African counterparts when it comes to legislative consolidation, innovation and use of modern technology in government procurement processes. The first key lesson learned was the fact that these three African countries had specialised public procurement acts. In the researcher's view they are more experienced in term of legislative reforms relating to public procurement than South Africa which does not yet have a specific public procurement act, it only has generic public financial management legislation that does not focus on public procurement. Therefore, South Africa can learn more on how these three countries managed to enact these specialised acts of parliament. For example, Kenya started public procurement reforms in 1978, while public procurement act was introduced in Zimbabwe in 1999.

The second key lesson that South Africa can learn from these three African countries is that it is public knowledge that South Africa as a country does not have e-government and e-procurement technologies and related policies, it only has an electronic central suppliers' database which is nowhere near the e-government and e-procurement technologies. Yet, some of these three countries started adopting e-government and e-procurement technologies as far back as 2000. South Africa can learn how they went about adopting and implementing these technological reforms as part of the fourth industrial revolution.

The learning observations were that there are a lot of similarities on how the public procurement is conducted in these three countries. It is through this review that the researcher discovered that there are around two basic prescripts of parliament governing government procurement namely, the public procurement act and its regulations. Normally the act provides a high level overview of the guidelines, and the regulations give more specific details on how public procurement should be conducted. Furthermore, the third lesson relates to the public procurement regulator. Depending on the country, the regulations or the act gives effect to the establishment of a procuring regulator (which South Africa does not have), which is an independent and impartial body to oversee public procurement.

Therefore, the above observations compelled the researcher to study these three African countries. These three case studies examined the significance of reforms, accountability and transparency in public procurement towards ensuring government value for money spent in public procurement.

2.12 Summary and deductions

Some deductions from this chapter are through literature reviews relating to generic, and a bit of a global, public sector procurement. Where it was found that public sector procurement finds itself operating within a tight political system it sometimes interferes with public procurement operations and transparency. The chapter started by giving a background to public procurement in general followed by developing economies' public procurement reforms, where main and secondary objectives of government procurement in emerging nations were briefly discussed.

The effects of public procurement on service delivery were also discussed, where service delivery was initially defined in various contexts. At the end, the researcher concluded that although definitions were given in different contexts but community the "well-being" was a common theme and at the centre stage of what service delivery is. There was a brief look at some trends in serious South African service delivery protests, which was followed by a provincial breakdown of protests for the first two quarters of 2018. There was an observation that serious service delivery protests were on the rise in South Africa. Auditor-General of South Africa (AGSA) national audit outcomes for the period 2013 to 2016 were also discussed, which indicated some regress in terms of audit outcomes and the most important take away was an emphasis on the fact that clean audits are meaningless if there is no improvement in service deliver. The relationship between public procurement and service delivery was examined, where it was found that there are four urgent reforms to be effected in order to speed up efficient and effective service delivery.

A distinction was made between procurement and supply chain management; while private and public sector procurement were also differentiated. Public sector procurement was generally defined as a process that involves hiring, purchasing or acquiring goods, services and construction through contractual means in order to render efficient service delivery. Some similarities were also noted, in that both private and public sectors have one mutual goal, which is to get value for money throughout the value chain process. There was discussion of approaches on how public procurement can learn from some of the good practices of the private sector, in that communication between government institutions and suppliers is very limited and unsatisfactory due to some procurement prescripts. Further to that, public sector procurement was found to be inflexible and have unnecessary restrictions that are imposed to service providers not to suggest or propose alternative and innovative products to satisfy the public sector better and at a lower cost. This was coupled with some external and internal demands found only in public sector procurement.

Public-Private Partnership processes were discussed as another form of public procurement, in that a private business party agrees to use government property in order to perform functions that are ordinarily performed by government. Corruption in public procurement, with its effects on service delivery, was summarily discussed, coupled with some measures to combat corruption using rule of law principles and good governance with its three key role players.

There were three main reasons why case studies of public procurement in Kenya, Zambia and Zimbabwe were conducted and these were, South Africa does not have a public procurement act of parliament which specifically deals with public procurement yet these three countries already have them. The second one was that some of these countries started adopting e-government and e-procurement technologies as far back as 2000. The third one was that South Africa does not have an independent and impartial public procurement regulator which these three countries already have.

Resulting from the case studies conducted, there were three key lessons learned, the first one was for South Africa to learn how these three countries managed to enact and implement specialised public procurement acts many years ago. The second lesson was to learn how these three countries managed to promulgate and implement e-government and e-procurement technology policies and maybe they can help South Africa to improve its central suppliers' database to fully functional e-government and e-procurement. The third lesson for South Africa would be to learn how to establish a procurement regulator, to independently and impartially oversee public procurement.

The next chapter will provide a synopsis of literature that relates to a specific South African legislative environment governing public procurement.

CHAPTER 3

SOUTH AFRICAN PUBLIC PROCUREMENT LEGISLATIVE FRAMEWORK

3.1 Introduction

A synopsis of generic and global public procurement was outlined in the preceding chapter; however, this chapter draws attention to the South African public procurement, its background and legislative framework. The chapter also aims to achieve three of the research objectives. The first research objective is to explore exhaustively various legislation and prescripts governing South African public procurement. The second research objective is to explore some of the major South African public procurement challenges. The last research objective to be discussed will be an analysis of case laws in order to review some of the South African public procurement legislation.

In trying to give direction the above research objectives, the chapter will give background to South African public sector procurement and its legislative framework. Some major and key role players in South African public procurement and the current procurement model will also be discussed in detail. Furthermore, the formation of the OCPO and its functions will be outlined. The challenges of the current public procurement model, challenges from disintegrated procurement Information and Communications Technology (ICT) systems, challenges from pre-tendering, tendering and post-tendering processes, challenges from fragmented public procurement legislation, and challenges from the hostile political environment will be critically discussed. Discussion of court judgments as case studies in order to necessitate the review of legislation relating to public procurement, linked to that will be the discussion of good governance principles in South African public procurement. Lastly, discussion on the positioning of government procurement as a strategic function across government spheres (supported by the South African cabinet) will be outlined.

3.2 Background to South African public procurement legislative framework

The environment in which public procurement operates is under intensive legislative scrutiny coupled by low level of technology systems integration yet politicians expect high level service delivery (Bolton, 2006; Eyaa & Oluka, 2011). The government uses public procurement as a way to redress the imbalances of a pre-democracy political dispensation (Bolton, 2006). In some cases, secondary objectives such as environmental, industrial and social policies are achieved using public procurement. The above statement indicates that public procurement is critically important not only to achieve primary objectives, which is direct service delivery but also secondary objectives (Cane, 2004). In that regard, the current public spending channelled through public procurement is around R900 billion for service delivery processes.

On 27 February 2013 on his budget speech, Pravin Gordhan the then Minister of Finance indicated that there will be radical changes in South African public procurement; changes which would be aimed at cracking down on corruption and fraud. He stated:

“The process for setting up the Office of the Chief Procurement Officer in the National Treasury has begun in earnest and we will soon be able to announce the name of a Chief Procurement Officer. A project team seconded by state agencies and the private sector has identified four main streams of work: (1) involving immediate remedial actions, (2) improving the current system, (3) standardising the procurement of critical items across all government institutions and lastly implementing the long-term modernisation of the entire procurement system” (Gordhan, 2013:28).

The Minister also indicated that,

“Among the first initiatives of the OCPO will be to enhance the existing system of price referencing. This will set fair value prices for certain goods and services. Secondly, it will pilot procurement transformation programmes in the Departments of Health and Public Works, nationally and in the provinces” (Gordhan, 2013:29).

Reforms in South African public procurement started as early as 1995, where main and broader aims were to introduce some kind of preferential procurement to help close socio-economic gaps that were created by pre-democracy administrations. These reforms were aimed at promoting and ensuring good governance principles (National Treasury, 2003). The basis of the reforms was entrenched in the provisions of the PFMA section 76(4)(C), MFMA section 112 and Preferential Procurement Policy Framework Act (PPPFA) (National Treasury, 2005b). In 2001, government of South Africa participated in a joint Country Procurement Assessment Report (CPAR) conducted by the World Bank, where certain critical elements in public procurement were found to be behind the world standards especially relating to the implementation of the provisions within the PPPFA (National Treasury, 2005b). CPAR results discovered that procurement systems were fragmented. The tender boards were governing public procurement while the improperly set-up norms and standards were guiding the provisioning in government institutions. In addition, there was poor financial management of public resources, which led to National Treasury instituting public procurement reforms after the CPAR results (National Treasury, 2005b).

3.3 South African procurement legislative framework

Governments around the world enact Acts of parliament to regulate public procurement in national, provincial and local governments as set out in specific legislation, regulations and policies (Hanks, Davies & Perera, 2008). In South African public procurement, there are above eighty legal instruments that govern public procurement; among other legislation are PFMA, MFMA, PPPFA, and BBBEEA (outlined in tables below). These parliamentary legislations are supported by their respective regulations, which includes, Treasury Regulations, Municipal Supply Chain Management (MSCM) Regulations, Preferential procurement regulations, instruction notes and circulars. BBBEEA determines codes of good practice, among other regulations. Previously, the local and provincial governments were permitted to determine and set their own preferential procurement targets, which are peculiar to their respective local and provincial governments; however, that freedom has been revoked by the national government as there were a lot of inconsistencies and abuse (Moeti, 2014).

National Treasury and other government agencies, such as the DTI periodically issue directives, aimed at trying to ensure transparency and uniformity in South African public procurement. The directives are there to ensure transparency before and after tenders are awarded, thereby ensuring that minimum compliance requirements to participate in a tendering process are consistent with the conditions of being awarded a tender and managing a contract.

3.3.1 South African Constitution, 1996

South African public procurement begins with s217 of the South African Constitution, where all high-level procurement processes are outlined. The National Treasury is empowered by the provisions of PFMA section 76 and MFMA to issue procurement regulations, policy, guidelines, instruction notes, circulars, norms, and standards. All public institutions are obliged to conform to these prescripts issued by National Treasury. Some of the major prescripts are described briefly below; where the implications and impacts of each of the prescripts are explored in detail (from Table 3.1 up to Table 3.4).

Table 3.1 South African Constitution, 1996

Prescript	Public procurement related content
Republic of South Africa (RSA) Constitution	<p>RSA Constitution s195 dictates that “Public Administration in South Africa must be governed by democratic values and principles”. The principles, pillars and values comprise the below, among others:</p> <ul style="list-style-type: none"> i. public administration that encourages development; ii. society must be encouraged to partake in the process of developing policies; iii. advancement and upkeep of highest ethics of professionalism; iv. accessibility, accurate information and timeous opportunity given to the public at large; v. advancement of effective, efficient and economical utilisation of public resources; vi. equitable, unbiased, fair and impartial service delivery and vii. accountability in public administration. <p>As provided under s217, which dictates, “When an organ of state in the national, provincial or local sphere of Government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.”</p> <p>Furthermore, s217 (2) and s217 (3) indicates the need for, “providing for preferential procurement to address the social and economic imbalances of the past”. The clause therefore forms the basis for allowing preferential procurement in government procurement. It is also quite clear that preferential procurement is limited by policy and that all preferential procurement applied must be within the legislative boundaries.</p>

Source: National Treasury (2005b)

3.3.2 Foundational prescripts

Table 3.2 will discuss on a high-level the most prominent and foundational prescripts governing public procurement.

Tables 3.2 Foundational prescripts

Prescript	Public procurement related content
PFMA	PFMA s76(4)(c) dictates that National Treasury is mandated to develop and issue various regulations, policy frameworks, instruction notes, guidelines and circulars. The prescripts must ensure that all public procurements are uniform and comply with the principles of the Constitution, section 217(1), which demands that any public procurement be competitive, equitable, cost-effective, transparent and fair.
PPPFA	As indicated in section 217(2) there should be national legislation to regulate preferential procurement, the PPPFA was enacted in 2000 to regulate all preferential procurement executed by all government institutions and all government institutions are obliged to follow the PPPFA framework.
MFMA	As per MFMA section 2(f) provisions which highlights the objectives of the Act, which is securing sound and viable fiscal management. Therefore, individual municipal entities and individual municipalities must develop and execute procurement policies within the provisions of Chapter 11, sections 110–119 of the MFMA. The Act also provides an outline to cover the following: <ul style="list-style-type: none"> i. procurement policy implementation; ii. contract management; iii. training of procurement practitioners; iv. participation of councillors; v. bidding process and interference with public procurement and vi. approval of tenders.
B-BBEEA	As indicated in section 217(2) that there should be national legislation to regulate the redress of the pre-democratic government imbalances, equity and address other socio-economic imperatives that the government wishes to achieve through the public procurement, BBEEA was enacted. The B-BBEE contribution certification of suppliers is regulated by this Act and government uses it to implement a fair and open preferential procurement system.
CIDBA	When government institutions procure any construction related works they are obliged to use provisions of the Construction Industry Development Board Act (CIDBA) as it only relates to construction works procurement. Preferential procurement guidelines and regulations are applicable to construction works, however, over and above that, construction works are also subject to Construction Industry Development Board (CIDB) regulations and guidelines that are regularly

	issued by the CIDB and therefore all construction related services exceeding R 200 000 must be channelled through the procurement processes and procedures as dictated by the Act.
SITA Act	The State Information Technology Agency was established in terms of provisions contained in the State Information Technology Agency (SITA) Act. Preferential procurement guidelines and regulations are also applicable to ICT procurements, however, over and above that, ICT procurements are also subject to SITA regulations and guidelines that are regularly issued by the SITA and National Treasury, therefore all ICT procurements of a certain threshold must be channelled through the procurement processes and procedures dictated by the SITA Act.

Source: Van der Walddt (2007)

3.3.3 Non-foundational prescripts

Table 3.3 below will examine the less prominent and non-foundational prescripts governing public procurement.

Table 3.3 Non-foundational prescripts

Prescript	Public procurement related content
Prevention and Combating of Corrupt Activities Act (PCCAA)	Both public and private sector procurement officials are bound by this Act, it dictates that all employees must disclose all unethical, fraudulent and corrupt activities executed by their employers to law enforcement agencies. Failure to disclose willingly will result in their prosecution. Furthermore, the Act gives provisions to protect any person who discloses any information under this Act.
PROMOTION OF ACCESS TO INFORMATION ACT (PAIA)	Access to procurement records for both public and private sector procurement processes are bound by this Act, where it dictates that all organisations must disclose any relevant and appropriate information to anyone who would like to reinforce his or her rights. However, disclosure of information in the custody of the state or any other private organisation must not infringe on the rights of the information holder or owner or any other implicated entity, this is as per section 32(1) of the Constitution.
Promotion of Administrative Justice Act (PAJA)	Constitution provisions under section 33 gives the right to any person or entity where the administrative action has been exercised to request reasons for that specific administrative justice which must have been procedurally fair, lawful and reasonable. The procedures followed in government procurement are therefore underpinned by the right of any

	<p>parties to challenge decisions made and to find recourse if unfair administrative decisions made by public procurement practitioners resulted in losses or discrimination.</p> <p>In most instances where the government is taken to court due to unfair administrative decisions, this Act is regularly used as the vehicle to claim corrective actions or compensation for losses from government.</p>
Competition Act	<p>During procurement process, there are possibilities of anti-competitiveness among the suppliers. Therefore, the Act regulates restrictive business practices and outlaws anti-competitive bidding procedures such as collusive bidding and price-fixing, to ensure that if such “bid rigging” or collusive practices are detected the Competition Commissioner may act against such suppliers by imposing penalties and sanctions to guarantee transparency and fairness in procurement processes. It therefore protects the public against companies that manipulate markets to gain unreasonable profit margins.</p>
Public Service Act (PSA)	<p>This Act regulates ethical standards and dictates the process and regulations that needs to be followed if a government official conducts remunerative services outside the normal government working environment. The regulations further dictates that all government employees must choose to be a director of a company doing business with the state, then resign from being an employee of the state and vice-versa.</p>

Source: Quinot (2014b)

3.3.4 Regulations, Instruction notes, Circulars and Guidelines

Table 3.4 Regulations, Instruction notes, Circulars and Guidelines

Prescript	Public procurement related content
Treasury Regulations	<p>Treasury Regulations and especially Regulation 16 and 16A regulate public procurement activities and systems in all provincial and national government departments and in certain public entities.</p> <p>The regulations prescribe the bid committee system that needs to be implemented, disposal regulations and ethical conduct of public procurement officials. In general, the National Treasury Regulations support the PFMA and ensure effective and efficient financial control in any government institution.</p>
Municipal SCM Regulations	<p>The municipal public procurement regulations require that an Accounting Officer of a municipal entity or municipality develop a procurement policy. The policy should amongst other things cover:</p> <ol style="list-style-type: none"> delegation and sub-delegation of procurement duties and powers; the role of municipal council and board of directors of municipal entity in procurement; procurement system establishment (Acquisition; Demand; Disposal and Logistics Management); training of procurement practitioners and other additional matters (ethical standards and prohibitions).
Preferential Procurement regulations	<p>The regulations expand on the PPPFA; they dictate the preferential procurement system that will be used at different threshold levels as well as how to incorporate B-BBEE policies in the preferential procurement process. They also prescribe the role of functionality and the requirement when applying local production and content in preferential procurement processes.</p>
National Treasury instruction notes	<p>National Treasury has published various instruction notes that have set policies, norms and standards regarding the implementation and management of a public procurement system.</p>
National Treasury circulars	<p>National Treasury has published various public procurement related circulars that have set policies, norms and standards regarding the implementation and management of any public procurement system.</p>

National Treasury guidelines	National Treasury has published various public procurement related guidelines and procedures that have set processes regarding the execution and management of an efficient and effective system of public procurement. All public procurement related regulations, instruction notes, circulars and guidelines are available from the National Treasury website.
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Source: CIDB (2006)

The above tables 3.1 to 3.4 and the below list of legal instruments including the long list of instruction notes and circulars and guidelines (which could not be listed here individually) are some of the above 80 legal instruments issued by South African government to regulate public procurement in South African: State Tender Board Act 86 of 1968 (STBA); Local Government: Municipal Systems Act 32 of 2000 (Systems Act); National Supplies Procurement Act 89 of 1970; Financial Management of Parliament Act 10 of 2009; Nursing Act 33 of 2005; Armaments Corporation of South Africa Limited Act 51 of 2003; Administrative Adjudication of Road Traffic Offences Act 46 of 1998; Disaster Management Act 57 of 2002; Public Audit Act 25 of 2004; Correctional Services Act 111 of 1998; Road Traffic Management Corporation Act 20 of 1999; Health Professions Act 56 of 1974; Housing Act 107 of 1997; National Land Transport Act 5 of 2009 and the DTI provisions for local procurement designations (National Treasury, 2015a).

3.4 Major role players in South African public sector procurement

In accordance with procurement legislation, every government institution implements the procurement framework to accommodate its requirements but within the ambit of the national government procurement legislation. The management structures of procurement processes in South Africa are unique, hence there are documents such as “SCM guide for Municipalities or Municipal Entities” and “SCM guide for Accounting Officers or Authorities” prescribing the role players in public procurement, along with their duties (National Treasury, 2005b).

The procurement framework allows space to create guidelines, practice notes and circulars and three procurement bid committees. These three bid committees that must be formed, they are bid adjudication, evaluation and specification committees (BAC, BEC and BSC) respectively. Table 3.5 below indicates the major role players in South African public sector procurement.

Table 3.5 Main stakeholders in South African public procurement and their roles

Key stakeholders	Responsibilities
National Treasury	Supervises the execution of procurement processes, develops procurement prescripts, issues standard bidding documents, public procurement guidelines and generates General Conditions of Contract (GCC) to accounting authorities and accounting officers, sets reporting standards also monitors public procurement policy derivatives as envisaged by the national government.
Provincial Treasuries	Assist all provincial government institutions with the implementation of procurement policies, directives and processes issued by National Treasury, support government institutions through giving advice, building capacity and organising training.
Chief Executive Officers or Accounting Officer	The Accounting Authorities or Accounting Officer are expected to constitute the Supply Chain Management Units (SCMUs).
SCMUs and Chief Financial Officer (CFO)	SCMU to assist all internal business units with the implementation of procurement policies, directives and processes issued by Provincial and National Treasury and also support internal business units by providing advice on procurement strategies. SCMU reports to CFO.

Source: National Treasury (2005b)

Table 3.6 below discusses the three bid committees that are crucial in South Africa public procurement operations. The composition of each of the three prescribed bid committees is further discussed in the summary, including its responsibilities and roles in the execution of public procurement. The collaboration among all committees is also outlined where the process starts with BSC, which feeds to BEC, which then feeds to BAC and or the accounting officer depending on the approved financial delegations of each procuring entity.

Table 3.6 Constituents, roles and functions of bid committees

Committee	Constituents, roles and functions of the committee
BSC	<p>The line department head is expected to be part of BSC, a procurement practitioner, some external experts might be invited to be part of the committee only on an advisory basis thereby constituting a cross functional team; and the accounting officer may appoint one official as a chairperson.</p> <p>ROLES: Develop product specifications, service scope of work, conditions, requirements of contract, functionality, equity and evaluation standards. BSC ensures that needs assessment, commodity analysis, supply base analysis, market and industry analysis, Political Economic Sociological Technological Legal and Environmental (PESTLE) analysis, and expenditure analysis have been conducted thoroughly.</p>
BEC	<p>It is recommended that the committee have a minimum number of five senior officials, including public procurement officials and other officials from the end-user sections in need of goods, services and works.</p> <p>ROLES: Allocate preference points; check capacity, ability and capability of the vendor to perform according to the contract terms. BEC submits a report and recommendations to BAC.</p>
BAC	<p>BAC should be composed of at least four senior officials at least one public procurement practitioner and be cross-functional. CFO or the delegated official should be the chairperson of BAC. Members of BEC cannot be dual members of BAC.</p> <p>ROLES: Consider the recommendations and reports made by BEC. The BAC is expected to award the contract or refer it for further consideration to the accounting officer, if financial delegations stipulated so.</p>

Source: adapted from Bolton (2009)

3.5 Current South African public sector procurement model

The below Figure 3.1 illustrates the link of seven (7) elements incorporated in a South African public sector SCM model, the elements also include the newly added contract management among others.

Figure 3.1 Procurement model for South African public sector



Source: Adapted from National Treasury (2015b)

As the custodian of all public procurement legislation, National Treasury is expected to issue guidelines for implementing the procurement policies. The elements of the high level structure of the South African public procurement system, as depicted in Figure 3.1 above, are shown under the auspices of the broader government policies, systems and the infrastructure available in government institutions. The public sector procurement model comprises demand, contract, logistics, disposal, acquisition, performance and risk management. Preferential procurement systems and distribution of wealth guides the procurement model, which ensures that these elements achieve economic development, equity and uniformity in public procurement in addition to good governance (National Treasury, 2005b). Fundamentals of the procurement model are outlined in summary below.

- **Demand management**

Public sector procurement in South Africa begins with this element. Demand management takes into account the assessment and processing of strategic plans, budgets, preferential procurement objectives and annual performance plans in order to produce annual procurement plans. The annual procurement plans give clarity and direction for the preferential procurement targets and for sourcing strategies. Primarily, this element aims to answer questions such as: What must be bought in order to achieve the government institution's strategic objectives? What choices do we have in terms of suppliers, goods and services, acquisition methods (sourcing strategy)? How will the required acquisition be funded (budget)? When will the procurement process start?

- **Acquisition management**

This second element involves the sourcing and acquisition of services, works and general goods, and includes the administration required by the demand analysis compiled from demand management. The application of an institution's procurement plans and preferential procurement objectives within the constraints of approved budgets triggers the strategic acquisition of needed products. Primarily, this element sets out the process of establishing what goods, works and services must be acquired. It aims to answer questions such as: What and when to acquire? How to acquire? From whom to acquire? At what price, including total cost of ownership (TCO)? Under what contracting terms and conditions to procure?

- **Contract management**

Based on the terms and conditions set out under acquisition management, contract management starts once the letter has been given to the successful bidder and he or she has accepted the offer. Contract management involves elements such as contract creation, contract execution, contract administration, contract review and contract closeout. Furthermore, contract management is meant to ensure that procuring entities get value for money for each procurement transaction – one of the conditions entrenched in section 217 of the South African Constitution. Contract management also ensures that the approvals for deviations or extensions are timeously and ethically obtained and are recorded so as to ensure that no services are rendered outside a contract's timelines and that the scope and costs remain within the budget approvals. Within contract management, there is also contract monitoring which ensures that expenditure aligns to the outputs to be delivered.

- **Logistics management**

Once the contract has been agreed upon and signed as above, the logistics management element starts up by placing orders, receiving goods, storing and issuing goods, ensuring payment of service providers and carrying out asset management. Among other matters, logistics management ensures answers to questions such as: When do we receive the procured goods, services and works? How do we store them (if storable)? How do we obtain maximum utility from them? As for stock or inventory items, it is a requirement that all delivered items are coded. Inventory acceptable stock levels are determined and set, which triggers order placement when due, and that products are received and distributed correctly, thereby ensuring proper warehouse management processes. In addition, orders are expedited, transport processes are organised when necessary and vendors are evaluated on specific performance deliverables.

- **Disposal management**

After products have been delivered and used or consumed as per the above logistics management element, disposal management begins. This is a structured management of assets which are unusable, are not economical to retain or maintain, or are not needed anymore. This involves administrative processes and disposal plans for all inventory and assets. Primarily, the process aims to answer questions such as: What items need to be disposed of? When and how to dispose of them? Because the disposal process of some items are regulated, certain laws must be adhered to around, for example, medical waste. Calculation of depreciation rates per item and obsolescence planning is compulsory, the creation of a database of all old and unusable material is necessary for proper planning and all material must be checked for any possible future re-use. A strategic plan

must be developed and executed within the applicable laws, and replacement planning of assets must be incorporated into this.

- **Risk management**

Risk management cuts across all the elements, this process can be described as a proactive action aimed at monitoring, assessing, avoiding and mitigating (to the level that is acceptable) those aspects that might have inverse effects on the achievement of a government entity's objectives. Therefore, risk management involves risk identification on an individual basis also the identification of a party that can handle risk better – where risk transfer costs are higher than retaining it, plus the institution must be prepared to bear such costs.

- **Supply chain management performance**

This element acts as a monitoring pillar for all the above elements, where a reflective probe is done to find out if proper procurement processes were followed. Furthermore, the probe should check whether the planned objectives were achieved from the time the needs were identified until the items were disposed of, because they have been utilised productively. There are reviews of compliance to standards and norms in order to gain procurement process savings. Contract management breaches and cost adjustment per item are monitored. Furthermore, checks and balances of the entire procurement process to see if it was cost efficient and effective and whether procurement practices were consistent with the government's broader prescribed policy directives. Supply chain performance management must therefore ask whether the effectiveness, efficiency and utilisation of the bid committee system supports the overall goals and objectives of an effective procurement system.

3.6 Formation of the Office of the Chief Procurement Officer

The below few paragraphs will give a rationale for establishing the OCPO and its functions and roles will be briefly explained. However, more details about the OCPO will be outlined in the forthcoming Procurement Bill.

3.6.1 OCPO mandate and functions

As envisioned by Gordhan, (2013), the pre-proposition under the forthcoming Public Procurement Bill is for the OCPO to be an impartial regulatory body mandated to regulate all procurement of services, goods and works by all government institutions in South Africa. Contracts entered into by procuring entities should be supervised by the OCPO to ensure accountability, transparency and maximum competition during the bidding process and it should be expected to monitor the contract execution to get value from the money spent by the government.

According to National Treasury (2015a), once promulgated, a draft Public Procurement Bill will consolidate, govern and regulate all public procurement processes in one central point; where, among other important matters, it will legally establish OCPO. It will delegate to OCPO various functions and powers, a few of which are discussed below.

The OCPO will be expected to develop and give advice on procurement directives, to administer procurement legislation, to ensure compliance with procurement prescripts, to ensure uniformity (in a manner which accelerates broader governmental developmental objectives), to make sure that value for money targets are met and service delivery methods are transparent. Accounting officers' performance will be audited by the OCPO, in order to conform to the provisions of the Constitution s217. The OCPO will develop various prescripts that will advance preferential procurement objectives in awarding government tenders and develop other socio-economic objectives. The OCPO can sometimes propose certain products to be procured nationally by National Treasury following the provisions of the national transversal contracting system.

OCPO to develop a code of conduct amongst service providers and public procurement practitioners, including political office bearers in public procurement, will be developed. Accounting officers and authorities will be supported by the OCPO to carry out national government mandates, procurement objectives and specific programmes. The OCPO will develop sanctioning measures for those government institutions and private institutions that transgress and abuse the public procurement system. The OCPO will be mandated to set standard contracting terms and conditions, standard bidding documents and standard operating procedures for procurement. Dispute resolution mechanism originating from any procurement processes will be developed and implemented (National Treasury, 2015a).

3.7 Challenges of the current South African procurement model

There are public procurement challenges that arise from various governance and legislative practices and still others from fragmented procurement ICT systems. Challenges also arise from the pre-tendering, tendering and post-tendering stages. Further challenges arise from fragmented procurement legislation and some from the political environment within public procurement. These challenges will be discussed in the following subsections.

3.7.1 Challenges arising from various governance and legislative practices

National Treasury (2005b) indicated that there is an important role played by public procurement in the financial and governance management of all government institutions trying to render quality service delivery. Despite several controls and measures instituted by the National Treasury, the entire public procurement system still faces a number of challenges, such as insufficient planning, budgets not linked to demand plans, accountability, insufficient skills and knowledge, unethical behaviour, capacity shortage, corruption, fraud, non-adherence to the public procurement framework, inadequate monitoring and evaluation of public procurement. These challenges are further discussed below.

- **Inadequate knowledge, capacity and skills**

Lack of capacity, skills and professionalisation in public procurement is evident; this despite the fact that the National Treasury periodically develops training material in the form of skills training programmes (National Treasury, 2005b). Ambe and Badenhorst-Weiss (2011a) indicated that one of the impediments holding back the economy of South Africa, is the shortage of skills and capabilities, prevalent among public procurement practitioners, which automatically hinders the service delivery.

While successful implementation in public procurement mainly depends on highly skilled procurement professionals; the skills level of some government practitioners is way below the required standard. There have been several workshops aimed at equipping public procurement practitioners with better skills, yet the gap is still wide (Migiro & Ambe, 2008), this indicates that the impact of training offered does little to improve the efficiency of the public procurement processes. Furthermore, leadership also adds to the bad performance in public procurement; this is mainly due to indecisiveness across procurement processes (McCarthy, 2006). Sometimes department line managers do not have adequate skills to draft proper specifications, terms of reference, local content and production requirements, evaluation criteria and functionality.

- **Non-adherence to regulations and policies**

The National Treasury has promulgated several acts, policies, rules, regulations and procedures to aid successful execution in the public procurement system (National Treasury, 2005b); yet there is very low compliance with the public procurement prescripts. Some of the common non-compliance problems relate to the use of anti-competitive procedures in the procurement processes, furthermore the incorrect usage of the preferential procurement system is still a challenge within various government institutions (Matthee, 2006). The improper use of bid committees, non-adherence to procurement thresholds, improper extension of validity periods when bids are advertised are some of the common non-compliance challenges. Furthermore, Van Zyl (2006) indicated that the disqualification of bidders for irregular reasons, awarding of bids to non-compliant service providers and limited bidding processes is inappropriately used in order to make practitioners jobs easier. Ambe and Badenhorst-Weiss (2011b) note the prevalence of irrational and illegal reasons for deviating from the normal tendering procedures; furthermore, there are insufficient controls and measures to handle the non-compliance with the procedures for appointment of bid committees.

- **Poor planning, demand management and budgeting**

The development and execution of strategic plans and annual performance plans in order to produce annual procurement plans linked to budgets is very poor. The annual procurement plans give clarity and direction for the preferential procurement targets and sourcing strategy processes, which depend on a budgeting model being implemented for each acquisition (Ambe & Badenhorst-Weiss, 2011a). Monitoring and evaluation (intended to make sure that scarce government resources are utilised in an effective and efficient manner) of service delivery is poor (Luyt, 2008). Furthermore, there is a lack of planning and budgeting, which affects execution within the government procurement system. Therefore, it is vital that managers, public procurement practitioners and leaders sufficiently link the demand planning to the budget processes. This then translates into the procurement plans, which are submitted annually to either Provincial or National Treasury.

- **Corruption, fraud and accountability**

In most cases, there is no consequence management in public sector procurement in that a procurement official is found guilty of financial misconduct in one government entity, this official resigns and is soon employed in a different government entity. This scenario normally happens because there is no professional body in this field to strike an official found guilty of financial

misconduct off the roll. Government resources are at risk of being misappropriated by corrupt and fraudulent individuals if transparency and accountability systems are not reinforced and strengthened (Jeppesen, 2010). Therefore, transparency and accountability are at the centre of public procurement in ensuring that government gets value for money in its procurement processes (Soudry, 2007). South Africa had to enact and improve several laws and prescripts in order to curb escalating fraud and corruption (Mahlaba, 2004). Several institutions have been established to fight fraud and corruption, institutions such as the Asset Forfeiture Unit, the Specialised Commercial Crimes Unit, among others (Mahlaba, 2004). As soon as South Africa entered democracy, a variety of citizens raised hopes that a better life was looming, quality service delivery would be realised for all, however, due to fraud, and corruption quality service delivery has not been forthcoming (De Lange, 2011).

- **Poor evaluation and monitoring of procurement processes**

During the development of policies, information relating to how the government executes its own public procurement systems is needed (Acevedo et al., 2010). Therefore, strong evaluation and monitoring mechanisms are required in order to ensure that policy makers have sufficient information to change, promulgate or repeal other procurement policies that are not yielding the required procurement targets and results. Furthermore, proactive measures need to be in place so that monitoring and evaluation measures are not always reactive and deal with matters and irregularities after the damage has occurred. Even after the transgressors are caught breaking the law, few convictions, let alone sentences, are recorded. In most cases transgressors are just moved from one government entity to another which could be seen as a reward for the transgression (Stemele, 2009).

- **Unscrupulous behaviour**

Morals and ethics play an important role in public procurement operations, for example at Passenger Rail Agency of South Africa, Eskom and South African Airways to mention a few, some senior officials in management and public procurement enjoy enormous power and privileges – which are prone to be abused (McCarthy, 2006). In all public sector procurement processes, there is the possibility of anti-competitiveness among the service providers. Therefore, the Competition Act regulates restrictive business practices and outlaws anti-competitive bidding procedures such as collusive bids and price-fixing. If “bid rigging” or collusive practices are detected the Competition Commission may act against such suppliers by imposing penalties and sanctions to ensure fairness and transparency in the procurement and bidding processes. Therefore, Stemele (2009) indicates that the Competition Commission protects the public against unethical companies and public procurement practitioners who manipulate markets to gain unreasonable profits and undue benefits. However, recently the operations of the Competition Commission have fallen short of expectations in that its processes are reactive, not proactive, and sometimes the proceeds of their fines or sanctions do not directly benefit the victims.

3.7.2 Challenges arising from fragmented procurement ICT systems

There is data fragmentation and inconsistency because there is not one central data point or repository where all government institutions can get help for decision-making processes. A data repository is important, especially when venturing into strategic sourcing as a sourcing method in

government institutions, however, due to data fragmentation, public procurement cannot be efficient nor effective (National Treasury, 2015a). An example is the non-existent functional and interactive national central suppliers' database. This compels service providers to register on the databases of each government institution, causing inconvenience and excluding those who cannot afford to register with each government institution. Automation in government procurement is not yet adopted, which challenges service providers and government procurement efficiency as a whole; this is simply because each section of government has their own electronic procurement system. Collaboration and synergy between government agencies is not up to the required level, an example would be the integration of systems by Department of Public Service and Administration (DPSA), Companies and Intellectual Property Commission (CIPC), Department of Labour, DTI and the South African Revenue Service (SARS). Integration of the above systems is impossible because each government institution has its own procurement system, therefore public procurement system remains disintegrated, non-electronic and not automated (National Treasury, 2015a).

There are more than 36 procurement systems used by different government entities across three spheres of government, therefore it is impossible to use standardised and uniform standard operating procedures (SOPs) relating to procurement systems. Non-uniform and disintegrated systems and procedures make it difficult for the AGSA to conduct its annual audits as each government institution and sphere of government uses different systems; therefore, public procurement performance, monitoring and evaluation become impossible.

3.7.3 Common challenges in pre-bid, tendering and post-bid stages

According to National Treasury (2015a), there are numerous weaknesses in government procurement system, some of which can be resolved through training, development, coaching and mentoring practitioners. Provincial and National Treasury are expected to provide advice and support around procurement operations to ensure that the drafting of procurement plans, demand management, specifications and terms of reference are above board and comply with the procurement legislations. As a result, challenges and weaknesses manifest themselves in all three procurement stages of pre-bid, tendering and post-bid.

The poorly drafted bid specifications lead to poor quality products being procured and delivered. As per the current procurement legislation, procurement practitioners are not allowed to develop biased specifications, yet they do develop them. Linking of the budget to Annual Procurement Plans is not evident, which leads to acquisition of products which were not budgeted for. Incorrect usage of the procurement sourcing strategy leads to delayed delivery of needed products, sometimes they are never delivered. Further issues are poor and late submission of procurement plans, which are required to be submitted in the year preceding the start of each financial year and abuse of the procurement system by using non-competitive procedures (National Treasury, 2015a).

As described by National Treasury (2015a), there is a lack of transparency in bid invitations and there are irregular and improper bid evaluation and adjudication processes. Poorly thought out and ill-informed decisions about procurement sourcing strategies, increased number of split procurement transactions, evaluation criteria changed in the middle of evaluation process and the adjudication processes are further problems. Bidder's conflict of interest is not properly declared, and no due diligence carried out, bidding process interfered with, politicians demanding allocation of

certain tenders and contracts to their elites, all contribute to poor service delivery. Accounting officers ignoring the proper recommendations in order to serve their own motives, scores being manipulated to suit certain bidders, awarding of bids to more than one bidder in order to reach specific targeted bidders inappropriately, not filing of detailed tendering processes and records not kept for future reference and auditing, are further challenges in all stages of tendering.

Further issues are: drafting of contracts terms and conditions to benefit certain service providers, lack of project management and non-supervision of service providers; submission and settlement of false invoices without proof of certain milestones of the project completed; quality of products compromised by the service providers because of the use of poor quality materials; abuse of variation orders and its procedures, bidders bidding with far low prices and recover the difference by requesting invalid and unlawful variation orders; general poor contract management; and insufficient supplier performance monitoring and management (National Treasury, 2015a).

3.7.4 Challenges arising from fragmented procurement legislation

Chapter 6 of this dissertation shows a combined 79 percent of respondents agreeing (54 percent) and strongly agreeing (25 percent) with the statement which was posed to all respondents asking whether there was any fragmentation in public procurement legislation. A further combined 69 percent of respondents agreed (40 percent) and strongly agreed (29 percent) that fragmented public procurement legislation delays service delivery. Findings indicated that what delays service delivery is the fragmentation of public procurement legislation, among other reasons. The finding poses a huge challenge for the National Treasury as the custodian of public procurement legislation to ensure that there is radical consolidation of legislation governing public procurement.

It would be ideal to have less and less fragmented public procurement legislation in order to streamline all public procurement processes. Therefore, it is long overdue to start the process of consolidating the legislation governing the South African government procurement in order to make it easy to interpret thereby improving implementation and eventually speeding up service delivery, which is the core mandate of any government (National Treasury, 2015a).

Some of the general concerns in public procurement are that the National Treasury issues practice notes and circulars periodically without consulting with the public procurement practitioners in all three spheres of government. Further confusion is caused when some practice notes get withdrawn soon after they are issued. Most worrying is the notion that there is significant duplication and overlap between various regulatory prescripts leading to ambiguity as to which piece of legislation is applicable.

There are many inconsistencies in dealing with similar or related matters, some national and provincial procurement thresholds are set out in National Treasury instruction notes, while, at municipal level they are set out in regulations. These inconsistencies cause anxiety and confusion among public procurement practitioners who operate in the provincial and national sphere of government compared to those operating in local government sphere. As a result, it makes it difficult to transfer any public procurement practitioners any time, meaning that a local government public procurement practitioner cannot easily be transferred to other spheres of government, because the rules of the game are not the same.

As fragmented as they are, some legislation is not communicated well enough to public procurement practitioners to be understood properly. As a result, there are too many legal instruments, estimated at more than 80, which govern public procurement as a whole. Some prescripts are applicable only to national, local or provincial governments and some are applicable across all spheres of government and that on its own causes a lot of confusion among the public procurement practitioners. Some public procurement practitioners mix things up and use legislation that is not applicable to their sphere of government, as they cannot keep up with the scattered public procurement legislation, as a result legislation becomes ambiguous and thus open to subjective implementation (National Treasury, 2015a).

3.7.5 Challenges arising from the political environment

As per Chapter 6 of this dissertation, a strong and consolidated 89 percent of the respondents agreed that political pressures, which in most cases lead to non-compliance with public procurement prescripts, sometimes interferes with public procurement operations. Findings indicated that respondents know about the existence of political pressures in public procurement, however, due to politicians' status, practitioners are sometimes compelled not to follow prescribed legislation, procedures and processes for fear of losing their jobs. Public procurement managers have many challenges in addition to ones arising as a result of the political pressure. There is a very thin line between the political and administrative decision-making processes (i.e. oversight role of politicians) because there is a deep political interference in the government administration (i.e. public procurement) (Mafunisa, 2006:506).

Private sector procurement differs from public sector procurement largely because of the role played by political office bearers. Mafunisa (2006) states that "An important difference is that the ethical values and norms applicable to public organisations vary considerably from those in private organisations. Political authority and public accountability are two ethical norms specific to public institutions." Therefore, government statutory bodies, through the Acts of parliament and public procurement regulations, regulate government procurement and the private sector is governed by business plans approved by boards of directors (Fourie, 2009:629).

Mafunisa (2006:508) alludes that it is a norm for civil servants to "subsume" to their political principals and carry out public officer bearers' (politicians) instructions when carrying out their administrative functions. Sometimes political principals do not accept full responsibility to execute their constitutional duties for decisions taken under their name as sometimes they intentionally misinform or mislead National Assembly with its portfolio committees. As a result, public procurement officials need to rethink whether their loyalty lies to political principals or to the public as they are civil servants they are expected to exercise ethical, accountable and transparent judgment on their administrative decisions. Public servants are expected to exercise highest possible ethical standards in their execution of their duties to render public services.

Seniority ranks and salary levels are so important in public administration as a result top structures of management often do not have ability to listen to lower ranking officials' opinions or viewpoints. People management skills are critical as it requires good negotiation and communication skills hence all opinions and viewpoints have to be consolidated to take proper management decisions in the interest of the public (Fourie, 2009:635).

3.8 Review of some procurement legislation

Section 33 of the Constitution gives a right to any person or entity upon which the administrative action has been exercised and some rights adversely affected to request reasons justifying a specific administrative action, which must have been procedurally fair, lawful and reasonable. The procedures followed in government procurement are therefore underpinned by the right of parties to challenge decisions and to find recourse if unjust administrative decisions made by public procurement entities resulted in losses or discrimination. In most instances where the government faces litigation due to unjust administrative decisions, PAJA as an act is regularly used as the vehicle to enforce corrective actions (Roos & De la Harpe, 2008). The above introduction is further exemplified below in few selective case laws pre-examined, as reported in Juta Law (2012).

3.8.1 Court judgments as case studies to substantiate the need for procurement legislation review

The below subsections will be analysing six case laws, in trying to highlight gaps in practicing public procurement legislation which the courts are trying to correct through judgments and court appeals or reviews.

3.8.1.1 *uMhlathuze Municipality vs WJ Building & Civil Engineering Contractors CC*

Theme: This case deals with the unlawful disqualification of bidders on the basis of unlawful municipal council's resolutions.

Background to the court case: The uMhlathuze Municipality invited bids for a project called "Mzingazi Village Sewer: Phase 1" in 2012. PMPZ, the company regarded as a second respondent to the case, was awarded a tender as preferred bidder. The applicant WJ Building and Civil Engineering, who did not win the tender, applied for a court interdict to stop the project getting underway, thereby interdicting both uMhlathuze Municipality and the bid winner. During the bid evaluation, tenders were evaluated using the 90/10 preferential procurement system; the applicant's price became first lowest price because the original first lowest price was disqualified due to what was regarded as an unresponsive bid offer. Therefore, the second respondent (PMPZ) was the second lowest price offer.

During the adjudication of tenders, BAC relied on a BEC recommendation report where it stated that the applicant's price was the lowest, however it was not awarded the bid because the applicant benefited from a previous tender won five years earlier and therefore the council resolution indicated that there should be service provider rotation.

The court thus concluded: Pending the finalisation of the review the uMhlathuze Municipality was interdicted from giving effect to the current tender, thereby stopping the second respondent (preferred bidder) from starting operations to construct sewerage lines.

Case analysis

The main reason for analysing this case law was to highlight some of the unlawful disqualification of

bidders, in this case done by the uMhlathuze Municipality. It is arguable that tenders issued by government are subjected to litigation constantly; this notion has seen South African courts inundated with bid review applications. This case is relevant to the public sector procurement in general as it considers the respondent's reasons for not awarding the contract to the applicant were arbitrary, not supported by any procurement legislation or not appearing in the tender invitation. The award was therefore made in an unfair manner; therefore, preferential procurement regulations should be reviewed in order to reiterate the only acceptable reasons to disqualify a tender and gives clear guidelines to avoid disputes and confusion in the future. Currently, the legislation is not clear on what grounds a bid offer can be rejected or disqualified in terms of functionality. Consequently, there should be clear National Treasury guidelines on the process of bid disqualification and the indication of limits in procuring entities.

3.8.1.2 uMsunduzi Municipality vs Indiza Airport Management (Pty) Ltd

Theme: This case deals with the process of cancelling a bid invitation after it has closed for receiving bid offers and then start afresh the new invitation.

Background to the court case: The uMsunduzi Municipality in KwaZulu-Natal invited bids to render the services of managing the airport in Pietermaritzburg. The uMsunduzi Municipality received six bid offers, only two bidders qualified to proceed to the next evaluation stage (which included that of Indiza Airport Management and one joint venture). It was decided that the joint venture must be awarded the contract, which was then objected to by the applicant. The objection was upheld within by the uMsunduzi Municipality, and the tender was referred back to the BEC for recalculation. The BEC after its recalculation, held that award of the bid be given to Indiza. However, the then municipal accounting officer decided for his own reasons to cancel the whole bid invitation and re-advertise it.

The court thus concluded: The information presented by the uMsunduzi Municipality in court did not justify the reasons for cancelling and re-advertising the bid invitation. The court concluded that the reasons given were neither justifiable nor rational. The court therefore set aside the decision of the municipal manager. Since there were only two bidders who went through to the second stage of evaluation, the uMsunduzi Municipality was ordered to award the bid to the Indiza Airport Management (the applicant).

Case analysis

The circumstances and reasons under which procuring entities can cancel and re-advertise similar bids must be rational and conform to the principles of fairness. Therefore, regulations promulgated under the PPPFA should be reviewed to stop unlawful and unfair practices such as this one. Preferential Procurement Regulations 2017 indicated the specific conditions attached to when to cancel a tender. Therefore, there should be a clear prescript or legal instrument which will give guidance when and how to cancel a tender to avoid confusion such as the above one.

3.8.1.3 *Rainbow Civils CC vs Minister of Transport and Public Works, Western Cape.*

Theme: This case deals with the importance of functionality in the awarding of tenders for the purposes of fairness, competitiveness and transparency.

Background to the court case: The Western Cape Department of Transport and Public Works (first respondent) invited tenders for the provision of a building maintenance programme (BMP), which included the daily cleaning of all provincial facilities such as schools, clinics and other designated provincial government areas. The BMP was designed to create employment in a similar manner to the Extended Public Works Programme (EPWP), thereby to alleviate poverty among the provincial communities (Quinot, 2014a).

There were ten tenders received, including the Rainbow Civils CC (applicant), eight tenders were eliminated because they scored less than a minimum threshold for functionality. Therefore, only Rainbow Civils CC and Safaz Signs & Electrical CC (preferred bidder – second respondent) remained for further price and preference evaluation. Rainbow Civils CC lodged an urgent court interdict preventing the first and the second respondents from finalising the service level agreement and commence with the operations.

The applicant argued that the points for functionality were supposed to be “reconsidered” again after the points for price and preference were calculated just before the award, which the first respondent did not do as it is not an SCM norm and the regulations discourage this practice. However, the provisions of the PPPFA section 2(1)(f) have never been tested in a court of law as it allows for “other objective criteria” to be used to award tenders of government; which was the basis of the applicant’s court review.

The court thus concluded: Functionality must be “reconsidered” after the points for price and preference are calculated before the award. Therefore, the court set aside the award of the tender to the preferred bidder (Safaz Signs & Electrical CC) citing the Constitution s217(1), PPPFA section 2(1)(f) as “other objective criteria” to award the contract. The court further held that 6(2)(e)(iii) of PAJA is there to promote administrative justice in public tenders. Therefore, this court judgment changed the tender awarding process to a three-stage process of functionality evaluation, price and preference evaluation and lastly “reconsider” the functionality to award the tender (Quinot, 2014a).

Case analysis

The analysis from the court judgment is correct, however “other objective criteria” must be motivated, as it is not regarded as a “norm” in terms of PPR of 2011, Regulation 6(5). Therefore, without the necessary motivation the “other objective criteria” cannot be used. Furthermore, one cannot dispute the fact that PPR of 2011 and that of 2017 are still not aligned to the PPPFA section 2(1)(f), therefore the recommendations to National Treasury would to align these two contradicting legal instruments. Either repeal the PPPFA section 2(1)(f) or review the PPR 2017 as they are currently applicable and both these legal instruments contradict each other. Because there is no clear indication, on what is contained at “other objective criteria” of section PPPFA section 2(1)(f); meaning the accounting officer can put anything thereby defeating the whole purpose of BBBEEA.

3.8.1.4 *Greater Tzaneen Municipality vs MACP Construction (Pty) Ltd*

Theme: This case deals with a bid offer that was disqualified because the price offer was below the average price determined by the procuring entity.

Background to the court case: Fifteen bids were received after the Greater Tzaneen Municipality had invited bids to upgrade their local roads. Due to previous bad experiences on similar projects, the municipality decided to appoint a private consulting engineer to the BEC to evaluate bids. The engineer recommended that six bids must be eliminated due to non-responsiveness. Using his engineering experience, he calculated an estimated project price, he then used that estimated price divided the number of bids received (fifteen) to get an arithmetic average price. The engineer used his estimated price and the calculated an arithmetic average price against each bid price offer received and all bid offers that were falling outside the engineers estimate and his arithmetic average price were eliminated. Therefore, MACP's (applicant) price was eliminated because it deviated by 30 percent while the winning bidder deviated by 2 percent; therefore, the applicant's price was classified as posing a risk of failing to finish the project. This perceived deviation and risk triggered the applicant's launch of a court review.

The court thus concluded: The judge held that the use of the arithmetic average and estimate prices were not rational nor scientific, as it ignores the possibility that some service providers might have legitimate lower production costs, which might automatically reduce their bid offer price. The engineer's methods also ignore the possibility that some bidders might deliberately offer very high prices so as to eliminate their rivals using the engineer's methods. Therefore, the award was reviewed and the municipality was ordered to stop using the estimate and arithmetic average method.

Case analysis

While the procuring entity has the right to eliminate bidders whose price offerings are too low and risky to the project completion, such a determination must be made objectively and apply market-related criteria through the risk assessment principles. Therefore, Regulations promulgated under the PPPFA should be reviewed in terms of the evaluation of tenders on functionality and gives clear guidelines to avoid disputes and confusions in the future by stating clearly that arithmetic average and estimate prices are not.

3.8.1.5 *Airports Company of South Africa (ACSA) vs Fleming SA (Pty) Ltd*

Theme: This case deals with the impact of a procuring entity taking in unsolicited offers by some bidders without a procuring authority sanctioning it and disclosing such offers to other bidders.

Background to the court case: The ACSA (first respondent) invited bids for the leasing of its available space in the international arrival terminals. Evaluation criteria were clearly stated on the bid documents. Two bids were received: Fleming and Big Five. After the evaluation of tenders Big Five was recommended as the winner. However, Big Five further offered ACSA a 12.5 percent rental income after tax which was not called for by ACSA nor was it communicated to other bidders. The additional rental of 12.5 percent triggered the applicant to launch a court review

claiming unfairness and lack of transparency in the process.

The court thus concluded: The court accepted that the BEC did not use the 12.5 percent extra rental in its decision to award the bid to Big Five but it had a huge impact during the recommendations and was supposed to be disclosed to other bidders; therefore, considering the extra rentals of 12.5 percent by ACSA was not a fair procurement process. Therefore, the court ruled that the award be set aside.

Case analysis

The case relates to public procurement in the sense that it reiterates the principle that the procuring entity may not consider any additional unsolicited bid offers, which were not endorsed by the procuring entity, without disclosing such to other bidders. Therefore, preferential regulations should be reviewed in terms of evaluation of tenders on functionality and give clear guidelines on how to call for unsolicited bids and a clear guide should be given by the National Treasury to avoid disputes and confusions in the future. The change should be specific and clearly state that procuring entities are not allowed to take into account unsolicited bid offers by any bidders without a procuring authority sanctioning it.

3.8.1.6 *SAPO vs Maxi Security (in Supreme Court of Appeal)*

Theme: This case deals with the issue of whether an “intention to award” a tender letter constitutes a valid contract between the government entity and the bidder.

Background to the court case: The South African Post Office (SAPO) invited bidders to submit tenders for the security services in their premises. Maxi Security (applicant) received an appointment letter indicating that their bid was successful. The appointment letter further indicated that the appointment was subject to meeting the verification of BBBEE empowerment and conclusion of a formal contract. Maxi Security signed and accepted the letter with its conditions. Maxi Security started offering the security services without a signed formal contract. SAPO wrote a letter informing Maxi Security that it was appointed on a monthly basis until the negotiations were concluded and the formal contract signed. However, the negotiations did not yield a formal contract; therefore, SAPO terminated the so-called month-to-month contract. Maxi Security refused to accept the termination of the month-to-month contract unless they were given a golden handshake of R14 million in contractual damages, which SAPO refused, hence the matter was heard in the Supreme Court of Appeal (SCA) in Bloemfontein.

The court thus concluded: The SCA held that there was a possibility that there was no contract as the appointment letter was on record stating that certain conditions must be met first. Therefore, the court ordered that the offer was conditional and was not final pending the negotiations and the appellant accepted the conditional offer as is. Therefore, the appeal against the Gauteng North High Court ruling was dismissed with costs; indicating that Maxi Security was expected to accept the termination of a month-to-month contract.

Case analysis

A letter of appointment to a bidder from a procuring entity does not automatically mean that there is a formal contract between the procuring entity and the bidder. Especially when the appointment letter indicates that there are further conditions and negotiations to be met before the final contract is signed, therefore law of contract should be reviewed (through public procurement practice note) in order to ensure that there is no confusion or disputes in the future (Juta Law, 2012:47).

In summary, one could draw some parallel deductions that procuring entities face a variety of challenges through litigation ranging from non-compliance to public procurement prescripts to fraud and corruption practices. It would be ideal if procuring entities could ensure compliance at all times and avoid litigation challenges, thereby avoiding service delivery delays. Furthermore, the National Treasury should urgently consolidate various legal instruments governing public procurement as the majority of the challenges highlighted in the case laws analysed above are due to fragmentation of public procurement legal instruments.

3.9 Good governance in South African public sector procurement

Various government institutions and individuals are required by law to report any unethical behaviours, fraud and corruption to law enforcement agencies, the Public Service Commission (PSC), relevant treasuries and sometimes to the DPSA. In order for government to improve performance (service delivery) there should be a review on how planning is done, how budgets are done and ensuring that annual procurement plans are aligned to budgets and adhered to, which will ensure faster and more efficient public services. The productivity of government institutions is measured by the new Department of Planning, Monitoring and Evaluation (DPME), which feeds to the National Planning Commission, in order to compile the annual performance plan for the whole government. Not all of these processes would be realised if good governance principles are not complied with. This compliance requires that various performance monitoring and auditing agencies (such as AGSA) be engaged to ensure good governance principles are adhered to. Furthermore, various agencies, such as Standing Committee on Public Accounts (SCOPA), are engaged to ensure financial management and spending patterns are adhered to, in trying to avoid any surprises (fiscal dumping) at the end of each financial year (Roos & De la Harpe, 2008).

3.9.1 Institutions to strengthen public procurement good governance

Based on the above background, there are various institutions, especially constitutional bodies, which were established in terms of the Constitution to enforce accountability and transparency and thereby promote good governance. All local, provincial and national government institutions and their entities are subjected to auditing by the AGSA to ensure good governance in terms of financial statements, financial commitments and any other accounts in order to ensure accountability and transparency, which strengthens good governance principles. The Public Protector is a constitutional body mandated to investigate any suspicions of maladministration, fraud, corruption and any other related improper activities by any government institution. Remedial actions advocated by the office of the Public Protector are binding, as has been recently confirmed by the constitutional court (Juta Law, 2012:47).

There is also a National Prosecuting Authority (NPA), which prosecutes any individual, or entity, which has transgressed the laws of the country, including the procurement laws on behalf of the state. There are various units, which support the work of the NPA, such as the Asset Forfeiture Unit, the Specialised Commercial Crimes Unit, the Witness Protection Unit, whistle blowing programmes and others. The SIU is mandated to investigate and curb fraud and to report the outcomes to the sitting president. The SIU operates independently and was established through the provisions of the Constitution to investigate any improper conduct by anyone or any entity.

The Hawks is an specialised and independent investigative body in the SAPS. The Hawks investigates, averts and combats organised crimes, specialised commercial crimes and specialised fraud and corruption activities. The Assets Forfeiture Unit is housed within the NPA under National Director of Public Prosecutions (NDPP) and was created in order to grant permission to the state to seize assets gained through criminal activities. The Financial Intelligence Centre (FIC) was formed in accordance with Financial Intelligence Centre Act (FICA) provisions. FIC is mandated to get reports of any suspicious criminal financial transactions. It is further mandated to prevent money laundering and also to combat organised criminal syndicates from benefitting from illegal profits. FIC is also intended to protect and maintain the good image of the country's financial management integrity (Juta Law, 2012).

The provisions of the Constitution under section 196 are fulfilled by the Public Service Commission Act, which gives effect to the establishment of the PSC and acts independently and impartially to enhance good governance principles in the public sector using its delegated powers. The PSC is mandated to investigate and monitor any operations across the public administration, furthermore, the hotline dealing with anti-corruption is managed by the PSC, and the hotline empowers to citizens who can report fraud, corruption and misappropriation by any government officials, in this case the public procurement practitioners. Any corruption reported to the PSC is referred to the relevant investigative agencies and various government institutions involved to investigate and probe the implicated officials and report to the PSC in terms of the provisions contained in the Act. In ensuring good governance, there is also an Independent Police Investigative Directorate (IPID), which is mandated to ensure impartial oversight of members of SAPS. Investigations are conducted by IPID into allegations relating to criminal, fraud and corruption committed by members of SAPS; therefore, irregularities in public procurement within SAPS are also investigated by IPID.

3.10 Positioning public procurement as a government strategic function

Based on the work of the institutions that are supposed to reinforce good governance in public procurement, the cabinet saw fit to position public procurement as a strategic function in quality service delivery. Therefore, in order to achieve customer satisfaction (for citizens), organisational goals and annual performance planning for the procurement function provide a strategic direction in government institutions. Procurement function plays a significant and important role in satisfying the organisational needs, market forces and dynamics when procuring goods, service and works. This role is successfully achieved when a government institution adopts the principles of strategic sourcing. The government enjoys huge buying power in South Africa, which empowers it to set various procurement standards in different sectors, therefore it should leverage its buying power and use economies of scale in order to gain better value in most procurement contracts (Zuma, 2009).

Procurement function acts as a central command point where all user departments within a government institution meet to tender their requisition plans or procurement plans for the following financial year. As such, a procurement function ought to be strategic in its operations, for example when two or more user departments require similar products, such as computers; it is expected that the procurement function will consolidate all similar requisitions (demand management function). This will allow bulk buying which might attract some discounts or economies of scale. The total cost of ownership is also strategised in procurement function, such as buying a car with a full service plan to avoid the additional service and maintenance costs for the car after the warranty expires. Therefore, Zuma (2009) concluded a cabinet meeting indicating that there is no doubt about positioning the public procurement as a strategic function in all government institutions in South Africa.

A well-structured, adequately staffed (with qualified and experienced personnel) and well-performing procurement function leads to the realisation of the strategic goals of any government function and help it meet its mandate. As per PFMA section 38, which indicates that “the accounting officer or authority of a department, trading entity or constitutional institution to have and maintain an appropriate procurement and supply system which is fair, equitable, transparent, competitive and cost-effective”. Therefore, it becomes a duty of an accounting authority or officer to ensure the procurement function is fully established in order to fulfil the conditions stipulated in section 38 of the PFMA and MFMA sections 62–65.

Therefore, procurement function should be elevated and represented at an executive level, reporting directly to the government institutions’ accounting officer or authority to ensure that its strategic importance is realised. Investment in the human resources of each government institution, especially of public procurement practitioners, is paramount in realising procurement function as strategic function. Investment in education through bursaries, continuous professional development of public procurement practitioners to keep up with trends in the field are important elements that need to be prioritised.

3.11 Summary and deductions

Based on the literature reflections discussed above, one can safely conclude that this chapter discussed the specific South African public procurement system and its legislative framework, where public procurement is regarded as a significant element in service delivery and has been used as policy to correct the inequalities and discriminations of the past political dispensation and pre-democratic government. Therefore, in order to ensure procurement uniformity, smooth operations, compliance and improved service delivery, the government saw that it was necessary to establish the OCPO. The OCPO is entrusted to evaluate and monitor the performance of accounting authorities and accounting officers in relation to compliance with procurement prescripts especially Constitutional provisions under s217. The OCPO sometimes proposes that certain goods, works and services be contracted nationally by National Treasury following the provisions of the national transversal contracting system, among other mandates discussed.

There was also a discussion of major and key role players in the public procurement system, where the Chief Financial Officers, Accounting Officers or Authorities, Provincial Treasuries and National Treasury were regarded as major role players in public procurement. The current public

procurement model was also discussed, with its challenges. There are challenges from non-uniform procurement ICT systems, challenges from pre-tendering, tendering and post-tendering processes and challenges from fragmented procurement legislation. In addition, there are challenges from a hostile political atmosphere, which were also critically discussed, and these are well known to the procurement practitioners but due to the hostile political environment, procurement practitioners find it hard to practice within the ambits of the relevant laws.

An analysis of a sample of court judgments as case studies were discussed in detail for the purposes of showing the importance of the government procurement legislation review, where various court cases were analysed to search for their implications and relevance to the South African government procurement operations as some of the court judgments recommended amendments to various procurement legislation. There was a further discussion on principles of good and ethical governance in South African public procurement, where the good governance was indicated as having more interest and special attention given to reporting and performance measures by various government institutions to ensure increased accountability and improved performance.

Some South African public institutions that strengthen the good governance were outlined, such as the AGSA, Public Protector, National Prosecuting Authority, Special Investigative Unit, and others. Lastly, the positioning of public procurement as a strategic function across the government institutions, which was also endorsed by the South African cabinet was also outlined.

The next chapter provides an outline of the literature that relates to specific South African public procurement methods and processes used to enhance service delivery.

CHAPTER 4

PROCUREMENT PROCESSES IN THE SOUTH AFRICAN PUBLIC SECTOR

4.1 Introduction

Recalling from Chapter 3, government procurement legislation was regarded as a key role player in the pursuit for better service delivery in South Africa. The challenges and possible review of some legislative framework were also discussed in the previous chapter. It is with these deliberations in mind that the researcher decided to critically discuss specific South African public procurement processes. This chapter will try to address two of the research objectives. First, the review of procurement practices, which is assumed to affect service delivery inversely. The second research objective would be to set up platforms for the development of strategies aiming to mitigate public procurement challenges and risks.

In trying to address the two research objectives above, demand management (needs analysis) and Annual Performance Plan (APP) processes, budget allocations and its link to APP will be critically discussed in this chapter. Further, the vigorous procurement processes and methods of bid document compilation, invitation of bids and receiving of bids will be discussed. Intensive processes of evaluating bids in general, and against functionality in particular, clearing of bids and awarding contracts will be intensively outlined. The South African three-bid committee system, the transversal contracting procurement and the management of contract against the signed service level agreements during post-bid will be discussed. The South African versus global e-procurement processes, the new strategic sourcing (Pareto principle) in public procurement will further be discussed in detail. Infrastructure development and maintenance systems will be discussed, with its benefits to the infrastructure-related government institutions. Global and South African perspectives on green public procurement will be discussed in detail. The newly introduced CSD, its processes and benefits will be briefly outlined. The summary of major public procurement methods will also be discussed and lastly, general public procurement processes and methods affecting South African public procurement will be summarised.

4.2 Demand management (needs analysis) and Annual Performance Plan processes

As the first element in the public procurement system and its activities, demand management makes sure that public funds needed are available to satisfy the needs of South African citizens identified during strategic planning sessions in government institutions. Therefore, demand management makes sure that service delivery is executed with acceptable quality standards and specified quantities at the right place, right price and right time. As part of demand management processes, one of the major and critical activities to be executed is the needs analysis; where the current and future needs of an organisation are analysed and forecasted based on previous expenditure (National Treasury, 2011a).

As indicated by National Treasury (2004), when demand management is implemented correctly, it forms an important part of various procurement processes that contribute towards attaining the planned strategic goals of any government institution. Correct implementation of demand management makes sure that goods, construction works and services are delivered correctly, as planned, with acceptable quality standards thereby satisfying the end-users (citizens). To ensure that irregularities are detected early and proactive actions are in place, also to ensure that procurement processes foster the compliance culture, the correct implementation of demand management plans is crucial. Therefore, the correct implementation of demand management plans helps government achieve its mandate and goals.

Correct implementation of demand management entails different stakeholders participating in the strategic planning processes of a government institution to ensure that the products needed are budgeted for and approved by authorities in the strategic planning session. Strategic planning participation is then followed by procurement planning, where, at the beginning of each financial year, procurement plans are developed in collaboration with all other stakeholders such as Chief Financial Officers and user departments. Therefore, the procurement unit is expected to work hand-in-hand with all user departments to formulate a comprehensive procurement plan for the whole year. The above process is followed by an analysis of goods, services and works needed, where the past expenditure on each product is analysed, this is then followed by a plan of acquisition of the identified products which, among other things, requires the sourcing strategy to be utilised (National Treasury, 2011a).

4.3 Budget allocations and annual performance plan

In an attempt to correctly implement the demand management in order to improve operational public procurement effectiveness, collaboration between procurement plans, strategic plans and budget allocation is of paramount importance. Therefore, in order to ensure that priorities and key government objectives are budgeted and attained, the budget plans must be linked to government institution's mandate and strategic plans to avoid irregular expenditure. However, currently there is a low level of integration and collaboration between budgeting principles and strategic planning principles in many government institutions in South Africa.

While short-term goals are catered for by budgeting principles in the form of Medium Term Expenditure Framework (MTEF) processes, the long-term government goals are catered for in strategic plans such as National Development Plan (NDP), which are set for longer, between five and twenty years. Therefore, given the past discriminately developmental challenges and inequalities in South Africa, allocation of resources and budgets are to be linked to long-term strategic plans. Currently the South African government has limited budgets and resources to service short-term and long-term strategic goals, therefore careful prioritisation in all government institutions is crucial (National Treasury, 2004).

It is expected that there should be a link between detailed budgets for procurement operations provided by the budget programme structures within each institution; thereby ensuring that service delivery mandates are reflected in the programmes and sub-programmes of every government institution. Long-term and medium-term service delivery targets should be incorporated within the budget allocations and strategic priorities to ensure that the activities of each government institution

correlate and have continuity to avoid changing strategic goals from one year to another. However, in South Africa, a change of a minister in a certain portfolio is likely to change the government institution's strategic goals, which upsets collaboration between budgeting and strategic goals (National Treasury, 2011a).

As a result of the above concerns, the budget structures of government institutions should not be changed in an attempt to reprioritise certain goals after the replacement of their political heads. It is generally acceptable for government institutions to change their budget programmes when new policies are adopted due to new political heads appointment, however that should be done minimally especially if the institution's mandate has also been changed (National Treasury, 2004).

4.4 South African main public procurement processes

Procurement processes used in South Africa will be described in summary in the bullet paragraphs below; they will highlight the prerequisite stages before the procurement of goods, services and works.

- **Extensive processes of bid documents compilation**

After the needs analysis and specifications are drafted, each procurement process in government entities begins with the compilation of the bidding documents, which outline the details of specifications, functionality evaluation criteria, terms of reference, contracting terms and conditions and various other declarations required by the public procurement prescripts. The main important information in bidding documents are the specifications, functionality evaluation criteria, terms of reference, which are used to qualify and disqualify bidders. In most cases, the end-user representative, under the auspices of the bid specifications committee, compiles the above bid requirements. Once the bid documents are finalised, the SCMU issues a tender through the bid invitation processes in the form of advertisements (National Treasury, 2015b). It is now also mandatory to advertise on the government eTender portal.

- **Invitation of bids**

Depending on the types of products and rand value to be procured, public procurement practitioners decide which procurement method is to be used. For government institutions governed by the PFMA the prescripts require three independent quotations from different service providers and suppliers when the procurement value is up to R500 000. However, for institutions governed by the MFMA, the prescripts require three independent quotations from various service providers and suppliers when procurement value is up to R200 000. As for the procurement values exceeding the above thresholds, competitive bidding processes are required, where the preferential regulations must be adhered to (which is applicable from procurement value of R30 000). The advertisements and bid documents should contain clear functionality evaluation criteria and any other conditions that will be used to qualify or disqualify bidders (National Treasury, 2015b).

- **Receiving of bids**

In the quest to promote the provisions of the Constitution s217, which, among other conditions, requires fairness and transparency in public procurement, bids are opened in public and at the same

time. The pre-screening is conducted by the SCMU for completeness, to ensure that all bidders meet the eligibility to bid on a public tender a national tender defaulters list is also consulted. The comparative schedule of all the bids received is prepared by the SCMU to assist the BEC when evaluating them. Claims levelled by the bidders in relation to the pre-qualification criteria and any other requirements must be verified by the SCMU and evidence provided to the BEC for ease of cross-referencing (National Treasury, 2015b).

- **Vigorous processes of evaluating bids**

The BEC is delegated the responsibility of evaluating competitive bids by an accounting officer, where the pre-set evaluation criteria are used to assess bids and the evaluation criteria cannot be changed after the closing date. Where applicable, the specifications and functionality (with its minimum threshold) are used as the first steps of formal evaluation followed by evaluation in terms of price offers and lastly evaluation in terms of preferential procurement requirements (currently consolidated into BBBEE certificates) (National Treasury, 2010). To determine whether the bidder does have the ability and the capacity to execute the proposed contract and to ensure quality of products acquired, the functionality is used as a yardstick to measure capability and quality. Functionality is outlined further below.

- **Further evaluation of bids against functionality**

Any government institution must, in the bidding documents, indicate if functionality will be used as evaluation criteria (National Treasury, 2017). Any procurement with a value of up to R50 million will be allocated up to 80 points for the price offer, depending on each bidders' rankings. Similarly, procurement values over R50 million will be allocated up to 90 points. Functionality points should not be calculated together with price points, therefore functionality points should be calculated first, price points second and preferential procurement points third and last. As for functionality, the minimum points for the bidder to qualify to be evaluated further for price and preference should be set up-front in the bidding documents. Out of 100 points, 20 or 10 points are reserved purely for a contribution towards achieving government redress programmes of preferential procurement through a BBBEE contribution. After all calculations are completed, the bid that totals highest number of points (price points added with B-BBBEE points) may be selected.

- **Clearing bids and awarding the contract**

After all, scoring and evaluation is done, a separate, independent bid assessment committee, the BAC deliberates on the proper processes followed by the BEC and considers the submitted report and awards the contract to the successful bidder. Dual membership between the BEC and BAC is not allowed, in order to maintain impartiality of the BAC, which further minimises risk and subjectivity in the public procurement system (Pauw, 2011). Risk assessment (financial standing, legal compliance among others) is crucial at this stage as it finally determines whether the bid is awarded to a winning bidder or not, the government institution is not obliged to award a tender to a winning bidder if the risk associated with such a bidder is not acceptable to the procuring entity. Contracts and service level agreements are normally prepared for the accounting authority or officer or their delegate to sign off. Once the contract is awarded, the SCMU or Contract Management Unit becomes responsible for contract management functions.

4.5 South African main public procurement methods

The subsections below will discuss the South African procurement methods which will be clarified by explaining the roles and functions of three bid committee systems when government is procuring goods, services and works.

4.5.1 Background to South African public procurement methods

South Africa public procurement has evolved tremendously over the years. In the quest to take care of pre-democracy discrimination legacies and the lack of capacity and professionalism in public procurement, it has been dominated by reforms over the past two decades. Therefore, to gauge how far the reforms have gone, it is vital to get a sense of how the current procurement methods function. Over the past decade, National Treasury has been trying to enforce uniformity and implementation in the execution of public procurement across all three spheres of government (National Treasury, 2005b).

4.5.2 Three bid committee systems in public procurement

The procurement policy of any government institution should capture the processes and procedures for competitive bidding in line with Treasury and MSCM regulations. Therefore, the compilation of standard bidding documents, invitation of bids through advertisements, pre-bid meetings (compulsory or non-compulsory), processes for opening bids after closing date, evaluation and adjudication of bids, contract administration and safekeeping of procurement records are all activities that needs to be captured by the procurement policy of each government institution (National Treasury, 2004).

Different stages of public procurement must be guided by, and operate under the auspices of, a procurement committee system, which is prescribed as a BSC, a BEC and a BAC at a minimum. It is prescribed by the regulations that an accounting authority and officer or their delegate must appoint all bid committee members in writing and members must accept the appointment with the terms, conditions and duties outlined. No political office bearer is allowed to attend any procurement committee meetings as an observer or in any other capacity. However, an accounting officer or authority is allowed to appoint any independent person(s) as observer(s) to ensure the transparency and fairness of the whole procurement process. The bid committee system is used when procuring any products of a value above R200 000 (MFMA institutions) or over R500 000 (PFMA institutions) and also for long term contracts. The above process does not prevent the accounting officer from instituting the bid committee system for procurements of less than the above thresholds. The three-bid committee system is detailed below (National Treasury, 2004):

a) Duties of a Bid Specification Committee

BSC members must understand the composition, powers and duties of the committee and its appointment thereof. Each BSC is expected to understand and apply the relevant constitutional provisions, legislation, regulations, policies, frameworks, instructions, practice notes, guidelines and ethical standards that govern the acquisition of services, goods and constructions works in the public sector. Furthermore, they should understand and apply the needs assessment and commodity

analysis for the correct identification of the requirements needed to support the strategic mandate and objectives of a government institution. Further they must understand the strategic importance of public procurement as an enabler of effective and efficient service delivery and a delivery model to give effect to the government institution's strategic vision and core mandate. Understanding that the application of the supply chain management concept as a whole in the procurement of services, goods and construction works is very important and that procurement is but one element of supply chain management.

Clarification and understanding of the powers, mandates, responsibilities, functions and roles of various other bid committees and other key stakeholders in public procurement is important. The BSC is also expected to know, understand and apply procurement and financial delegations. They should understand the factors to be considered during the determination of service requirements and specifications. In addition, it is critically important that the committee's meeting procedures and code of conduct are understood by all BSC members. The BSC is expected to apply the appropriate preferential points system and the evaluation criteria to be used in the evaluation of tenders, and set out the necessary general and special contract conditions to be applied in the bidding process and contract management.

b) Duties of Bid Evaluation Committees

The BEC is expected to understand and apply the correct preferential points systems and the calculation of points in the evaluation of tender and recommendations process of awarding contracts. They should also apply samples' evaluation, conduct inspections, tests, and check the prohibition status of bidders on the list of tender defaulters; that is, perform due diligence on recommended bidders before a final award of contracts. They are expected to understand the powers, mandates, responsibilities, functions and roles of other bid committees and key stakeholders. BECs are expected to apply the correct bid evaluation processes: including evaluation for administrative compliance, functional or technical evaluation, evaluation for local content and production, and evaluation of price and preferential procurement points.

The understanding and application of the relevant constitutional provisions, legislation, regulations, policies, frameworks, instructions, practice notes, guidelines, as well as ethical standards that govern the acquisition of services, works and goods in the public sector is important to BEC operations. The BEC is also mandated to apply and understand the needs assessment and commodity analysis that inform the correct identification of the requirements needed to support the strategic objectives of the government institution concerned.

c) Duties of Bid Adjudication Committees

The BAC, as an independent and impartial committee, is expected to know the powers, mandates, responsibilities, functions and roles of BSC and BEC to detect if any abnormalities and irregularities occurred during the drafting of specifications and or terms of reference during the evaluation of bids thereof. To effectively ensure leadership, good governance and oversight over the entire public procurement system within their respective government institutions to understand the mandate and role played by itself. It should understand and apply the preferential procurement points systems and the calculation of points (including the application of various delegations). It must understand

the composition of the BAC, its code of conduct and how the members and its chairperson are appointed (the chairperson is recommended to be the CFO of the government institution they are located in). They will understand and apply the relevant constitutional provisions, legislation, regulations, policies, frameworks, instructions, practice notes, guidelines, also the ethical standards that govern the acquisition of services, goods and construction works in the public sector. Finally, they should either award the contract to a successful bidder or recommend their choice to an accounting officer.

4.6 New strategic sourcing (Pareto analysis) in public procurement

The next few paragraphs will introduce the new government procurement method, one that has for many years been used successfully in the private sector. These Pareto principles will be analysed in order to show the benefits to government in adopting the strategic sourcing.

4.6.1 What is public sector strategic sourcing?

Public sector strategic sourcing is an approach that enables the government institution to select the most suitable supplier through vigorous analysis and investigations of the required goods, construction works and services. This is to assist the government institution to attain its mandate, strategic objectives and goals in the most efficient and cost-effective way, however, strategic sourcing in the public sector is still in its infancy due to restrictive public procurement legislation (Davis, 2005).

As indicated above, public procurement is governed by fragmented prescripts; however, procurement differentiation in government is brought about by an introduction of strategic sourcing. The goods, construction works and services purchased through strategic sourcing normally generate around 20 percent savings. South African government expenditure was expected to be more than R360 billion in 2016/17 financial year, R345 billion in 2014/15 and R350 billion in 2015/16. Therefore, any savings of more than 20 percent would make a huge difference to the huge government expenditure. However, in the quest for savings through strategic sourcing, some legislation needs to be reviewed and possibly enacted to allow for the smooth introduction of strategic sourcing in public procurement (National Treasury, 2015a).

Maximum customer satisfaction, market dynamics, government institution's goals and TCO are major pillars in public sector strategic sourcing. As a result, matters of category management, spend analysis are critical when executing this procurement method. Typical analysis in the strategic sourcing includes a needs analysis to conclude which products need to be procured in order to deliver on the mandate of government institution. Also part of a commodity analysis are historic purchases and substitute products. Historical spend analysis, current spend analysis, including projected spend analysis of a government institution, are critical in order to determine what portion of funds have been spent on what commodity or service and on what terms. Strategic sourcing also analyses the supplier base in order to determine the possible service providers and the contract conditions and terms to be applied. An analysis of a specific industry to determine the various dynamics within the industry is very important as government should leverage its buying power and economies of scale in order to get good value in contracts (Zuma, 2009). Strategic sourcing also analyses a government institution's procurement plans and preferential procurement objectives,

furthermore it considers alternative procurement scenarios thereby matching needs with the market in order to save money, achieve goals and enhance service delivery.

Based on the results of the above analysis, an appropriate sourcing strategy can be formulated and implemented. The resultant sourcing strategies should be dynamic and will have to be monitored and re-evaluated regularly to ensure the desired outcomes for government and for private service providers in the industry. However, the methods of engaging strategic supplier relationships discussed throughout this document do not include the process of obtaining quotations. Although price quotations are usually not utilised for specialised or complex requirements, it must be borne in mind that for all procurement between R30 000 and up to R200 000 (MFMA institutions) and up to R500 000 (PFMA institutions) price quotations may be obtained and prescripts of PPPFA are to be followed. This means that procurement must be utilised effectively and efficiently to promote preferential procurement objectives and other goals of government (National Treasury, 2015a).

4.6.2 Major types of strategic sourcing applicable to public procurement

The subsections below will introduce three different types of strategic sourcing which can be used by government South Africa as a new and innovative method of public procurement.

a) Universal

This is procurement where most government institutions aggregate quantities of their procurement requisitions in order to capitalise on bulk buying benefits, set industry standards and enjoy economies of scale. In this type of strategic sourcing government enjoys the power to set and determine demand and supply patterns in certain industries, and thereby enjoy cost savings. In South Africa, the OCPO can initiate various initiatives and strategies to centrally procure products which are regarded as strategic to their service delivery mandate (such as travel and accommodation in which case a transversal contract system is utilised) (National Treasury, 2015a).

b) Department-specific

This is the procurement of services, construction works and goods, which are normally complex and high on risk, and usually above a certain rand value, these products help a specific government institution's service delivery mandate and achieve key institutional objectives. Products such as school textbooks, pharmaceutical products and others are examples of department-specific strategic sourcing (National Treasury, 2015a).

c) Sector-specific

This is where a government is willing to promote and protect a specific industry by procuring certain products in a strategic approach (similar process as protectionism), vulnerable industries such as textile; footwear and leather are a good example. The government might be interested in protecting this industry because majority of its institutions use it, such a health, defence, correctional services, police departments. Some of the products are also protected by the DTI, through the process of local production and local content (National Treasury, 2015a).

4.6.3 Benefits of strategic sourcing in public procurement

The management and development of supply base and procurement planning is encouraged by strategic sourcing principles when applied in strategic procurement. It further outlines portfolio category management of goods, services and construction works and spending categories per portfolio for future procurement planning. Therefore, portfolio category management boosts the leverage of government buying power to set new standards in different industries thereby development of appropriate strategies for sourcing which increases procurement benefits and reduces costs thereof (Davis, 2005).

Application of strategic sourcing principles can bring about several benefits, one of which could be to normalise the price inconsistencies in the market, currently evident when the private sector sells products to government. In most cases, products are sold to government institutions at exorbitant prices, however if the same products are sold to a private sector organisation, prices are determined by the market forces of products' supply and demand. Using strategic sourcing principles government can reap benefits, like leveraging on government buying power, to set new standards in different industries. Government can also get the benefit of not duplicating procurement processes, in that consolidated strategic procurement and procurement centralisation is realised. Procurement executed by national, provincial and local government can be done in bulk thereby enjoying the discounts that come with bulk buying (NMBIE, 2011).

Strategic sourcing can bring about standard specifications for those commodities that are bought frequently, such as ICT software and hardware, office equipment, school furniture. The process ensures that end-users do not over specify or order. Consolidated reporting on government expenditure per commodity category and portfolio makes the decision-making processes easier for the broad agenda, quality and quantity of products needed by the government. Supplier relations will be improved thereby getting better market analysis (Davis, 2005). Strategic sourcing will bring about developing commodity specialist and portfolio managers, thereby moving away from public procurement practitioners being "paper-pushers" and back officers. Lastly, there will be improved service provider performance and evaluation management, which enforces supplier relationships for alternative innovative products.

4.6.4 Differences between strategic sourcing and traditional procurement

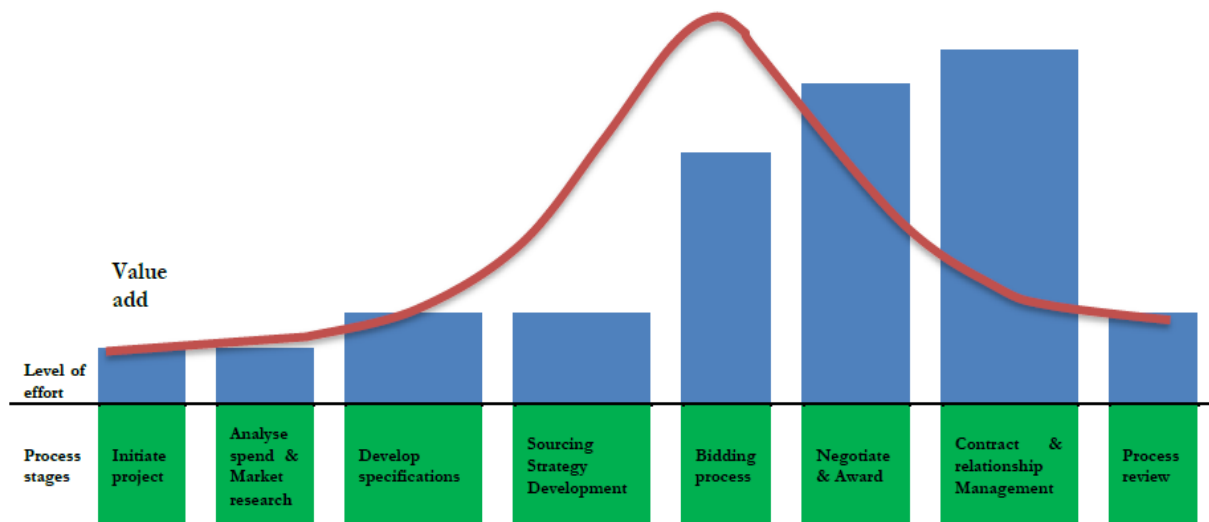
The following subsections will differentiate between the current traditional procurement methods and the new strategic sourcing methods and highlight the benefits of the new strategic sourcing methods to government.

4.6.4.1 *The traditional approach*

Figure 4.1 below depicts the limited overall effort put in to the initial planning phase of procurement, which leads to a situation where more effort is required during the bidding process to supplement the inadequate planning during the initial stages. As a result, greater efforts are needed to maintain supplier relationships and manage contracts, the stages from which government institutions gain little value. The traditional method of procurement regards procurement as just buying goods, construction works and services; no relationship is fostered during the process (need

to ensure long-term contracts). Currently, the government still utilises the normal bidding processes, which are always competitive, regardless of the product under procurement, therefore, traditional procurement does not differentiate between the critical and non-critical products – this has some disadvantages (Davis, 2005).

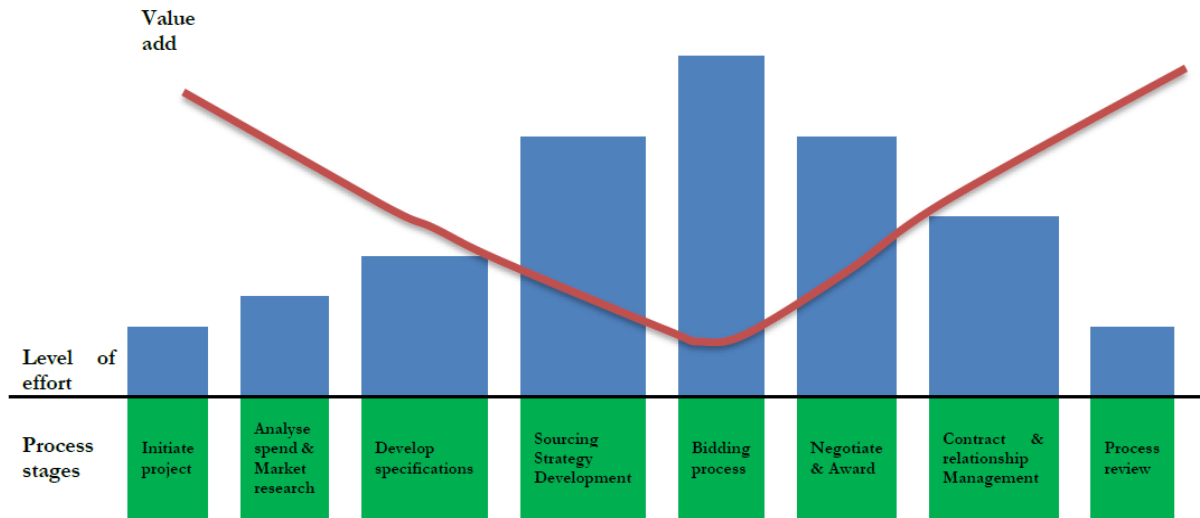
Figure 4.1. Level of efforts exerted in traditional sourcing processes



Source: Adapted from Davis (2005)

4.6.4.2 *The strategic approach*

This is a systematic, methodological, and logical approach to procurement, where more efforts are exerted during the research, analysis and planning phase of procurement (Kraljic, 1983), whereby challenges are identified as early as possible allowing time to develop solutions thereof as depicted on Figure 4.2 below (proper risk management principles). Due to a main focus on the management and development of suppliers and all other stakeholder relationships, there are fewer disputes in contractual deliverables and more time is spent on capitalising on opportunity costs, ensuring quality deliverables and ensuring cost-benefit bargains. In strategic procurement, value for money is achieved through proper identification of suppliers and their relationship management; therefore, government achieves its mandates and strategic objectives with fewer costs; hence, there is a need for a mind shift from traditional procurement to strategic procurement in government to take advantage of the benefits that come with strategic procurement.

Figure 4.2 Level of efforts exerted in strategic sourcing processes

Source: Adapted from Davis (2005)

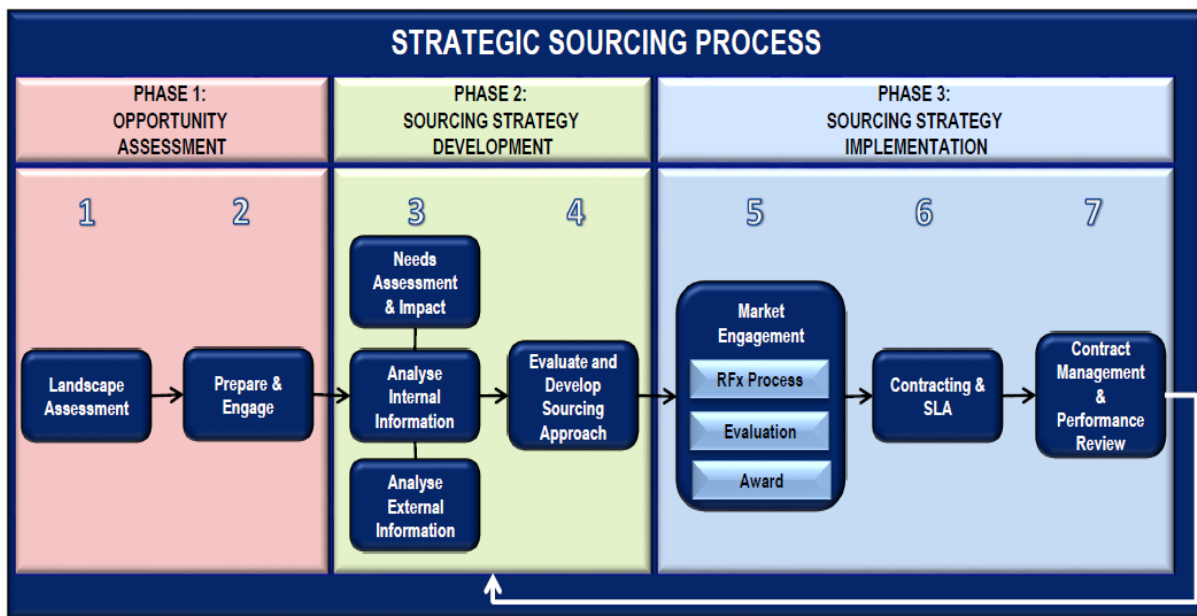
4.6.4.3 Seven essential steps in strategic sourcing

From Figure 4.2 above, Figure 4.3 below shows the strategic sourcing process, which provides a structured approach to the initiation of a market assessment, the development of a sourcing strategy and the implementation of a sourcing strategy. According to Moses (2018), there are essentially seven critical steps in the strategic sourcing process; they are grouped in three themes:

- assessment theme (landscape assessment and preparations)
- sourcing strategy development theme (needs assessment, analysis of internal and external information and develop sourcing approach), and
- sourcing strategy implementation theme (market engagement, contracting and SLA, contract management and performance review).

Therefore, after the last element of phase 3 on Figure 4.3 below, a sourcing process can go back to either Phase 1 or Phase 2, depending on the commodity and previous contract terms and conditions.

Figure 4.3 Seven essential steps in strategic sourcing



Source: Moses (2018)

4.6.5 Differentiated approach in public procurement

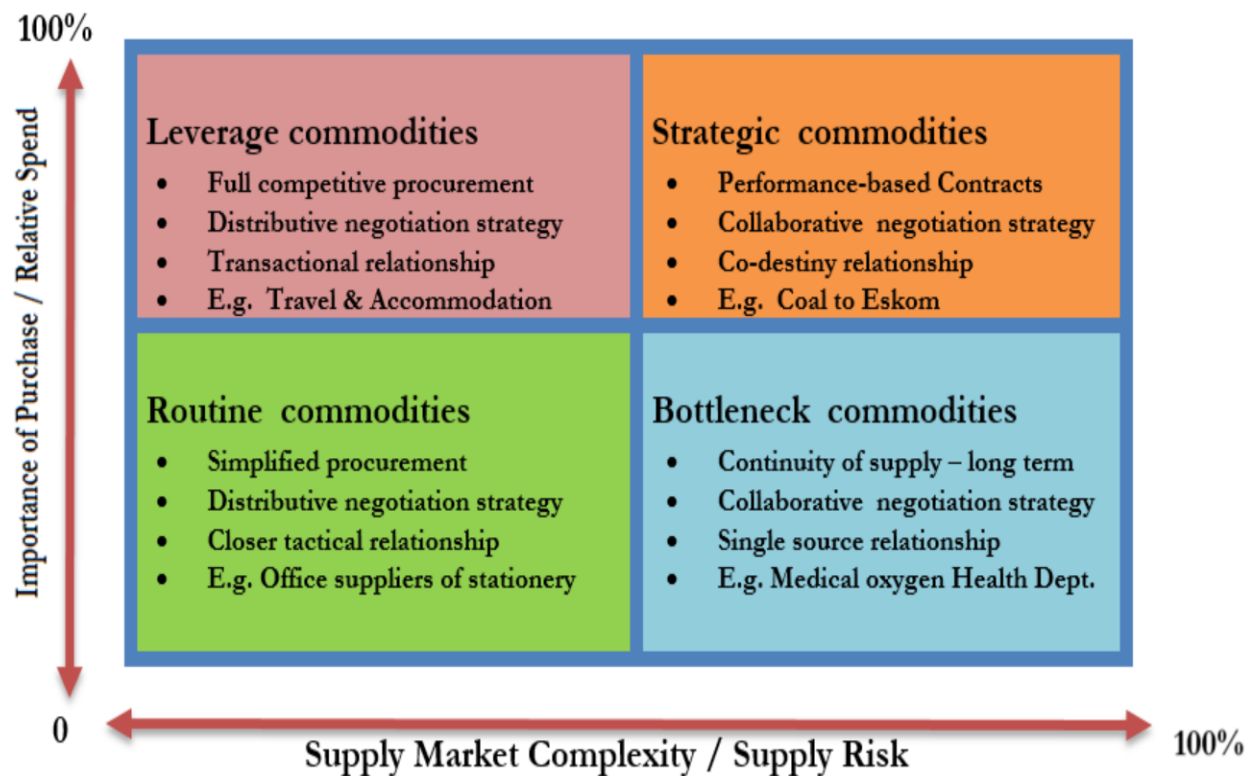
Adoption of differentiated approach in public procurement is critical, whereby focus is mainly on various groups of commodities or products. Procurement of property should not be treated the same way as procurement of normal groceries in a rational family, so be it with the government procurement of agricultural or medicinal equipment versus procurement of catering services or stationery should be differentiated, thereby practicing strategic sourcing principles. Therefore, developing various and suitable procuring methods for differentiated categories of products is very important in strategic sourcing principles (Davis, 2005).

Two factors are required to adopt a differentiated approach in procurement (Kraljic, 1983):

- The *strategic importance* of any commodities depends on how much expensive is a product, the more expensive a product, the higher strategy is to be used procurement.
- *Supply market complexity* where a commodity is found, depends on whether the commodity is freely available in the market or scarce and how much barriers to market entry and how rapidly technology is changing in the field where the product is located.

According to Kraljic (1983), using the above two criteria, public procurement practitioners and executives should ensure that the four commodity or product groups below have correct and appropriate sourcing strategies in order to capitalise on benefits of strategic sourcing principles.

Figure 4.4 The Kraljic commodity matrix



Source: Adapted from Kraljic (1983)

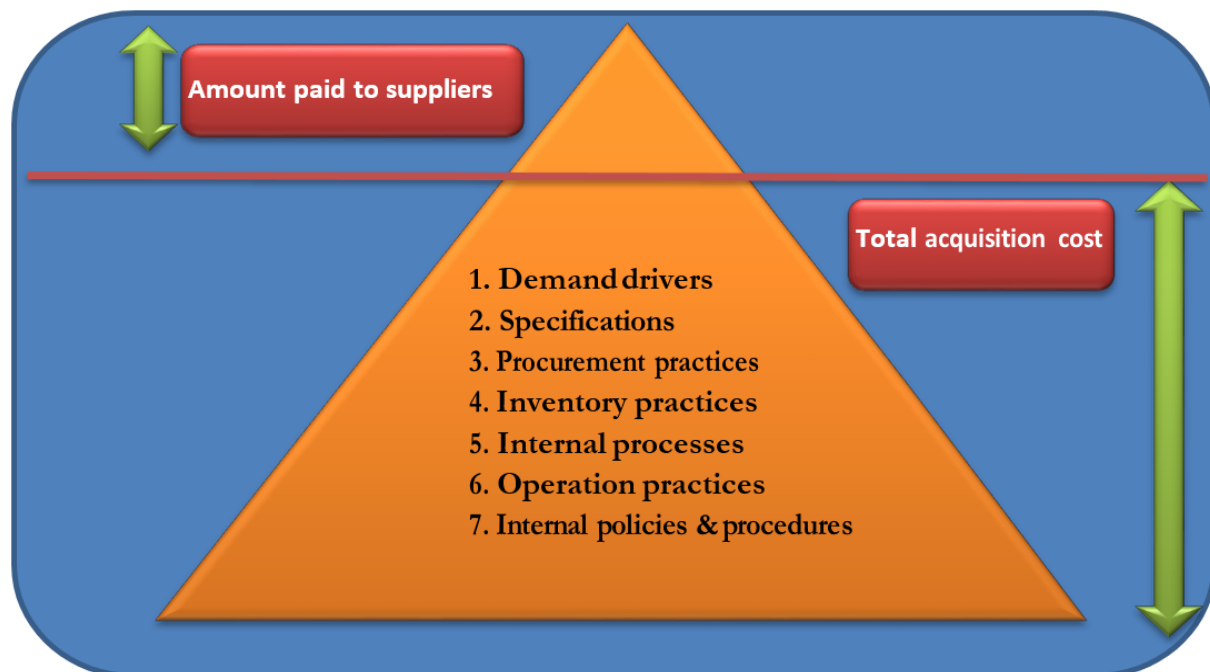
Service delivery is highly dependent on strategic products (Figure 4.4), these are products high in value and with complex specifications and very few qualified service providers, and therefore long-term partnerships with service providers are encouraged. Intense competition, high price value and market sensitivity characterises the leverage products, which are ordinarily high on value with many suppliers and a variety of services and products (for example major construction projects). Therefore, the government should capitalise on its buying power, set industry standards and economies of scale in order to gain better value in as many as possible of the procurement contracts in the leverage commodities (Zuma, 2009).

Bottleneck products are ordinarily very low in value; however, specifications of these products are also very complex and this can hinder service delivery. There are very few qualified service providers in the market and very few substitutes or alternative products on the market. When applying principles of strategic sourcing, long-term contracts and good management of risk in supply of products are critical ingredients in proper management of bottleneck products (such as medical oxygen for department of health), in order to help promote uninterrupted service delivery. Non-critical or routine products are characterised by very low value and individually executed transactions, mainly these are day-to-day services and goods. The market is full of qualified service providers able to supply large quantities of substitute products. The acquisition process ought to be very simple, with lower administration transactional costs. Some procurement processes are already automated, especially for routine products such as stationery.

4.6.6 Strategic sourcing scope

Figure 4.5 below illustrates the concept of the TCO, where any cost item below the red horizontal line is not taken into account in traditional procurement; however, in strategic sourcing, all items in the yellow triangle are taken into account, thereby ensuring that the real cost of acquiring any product is taken into account. In order to ensure total cost of ownership, service provider price negotiations must be executed properly; therefore, principles of strategic sourcing should be applied, which then in turn ensures among other things improved operational practices, demand drivers are well set, access to new suppliers, standardise pricing, cost savings, creation of partnerships with suppliers, increase quality and others. (Davis, 2005).

Figure 4.5 Strategic sourcing scope



Source: Adapted from Davis (2005)

4.6.7 Summary of strategic sourcing processes

In strategic sourcing, the process starts with a full understanding of the spending patterns per commodity category, then of the spending per service provider and, finally, taking into account future projections. This follows the principles developed by Pareto (NMBIE, 2011). The second step in strategic sourcing is an assessment of the market; this is to ensure that more suppliers are included in the pool of suppliers bidding for any product. The supplier survey is conducted to make sure the suppliers' maturity and to monitor the ability of bidders to offer a valid bid and execute the contract.

The next step in strategic sourcing is building the sourcing strategy, whereby the competitiveness of the market is assessed; the availability of alternative products in the market and involvement of end-users in the assessment of prospective service providers is paramount (Gelderman, 2003). The above process is followed by requests for proposals, quotations and information depending on the

stage and the type of a product being procured. The next step is to select a prospective supplier, the negotiation is crucial at this stage, and it is important to avoiding price chiselling. Negotiation is an area currently prohibited and discouraged in South Africa public procurement as it is mostly viewed as a space for fraud, bribes and corruption. The last step in strategic sourcing processes is when a winning service provider is invited to an inception meeting, where communication plans and execution plans are outlined on how the execution of the contract will be done (NMBIE, 2011).

4.7 Infrastructure delivery and maintenance procurement

The following subsections will discuss the processes and procedures the South African government has adopted to procure infrastructure related public service delivery initiatives. Matters of government infrastructure maintenance through tendering processes will also be discussed in detail.

4.7.1 Background in infrastructure delivery and maintenance procurement

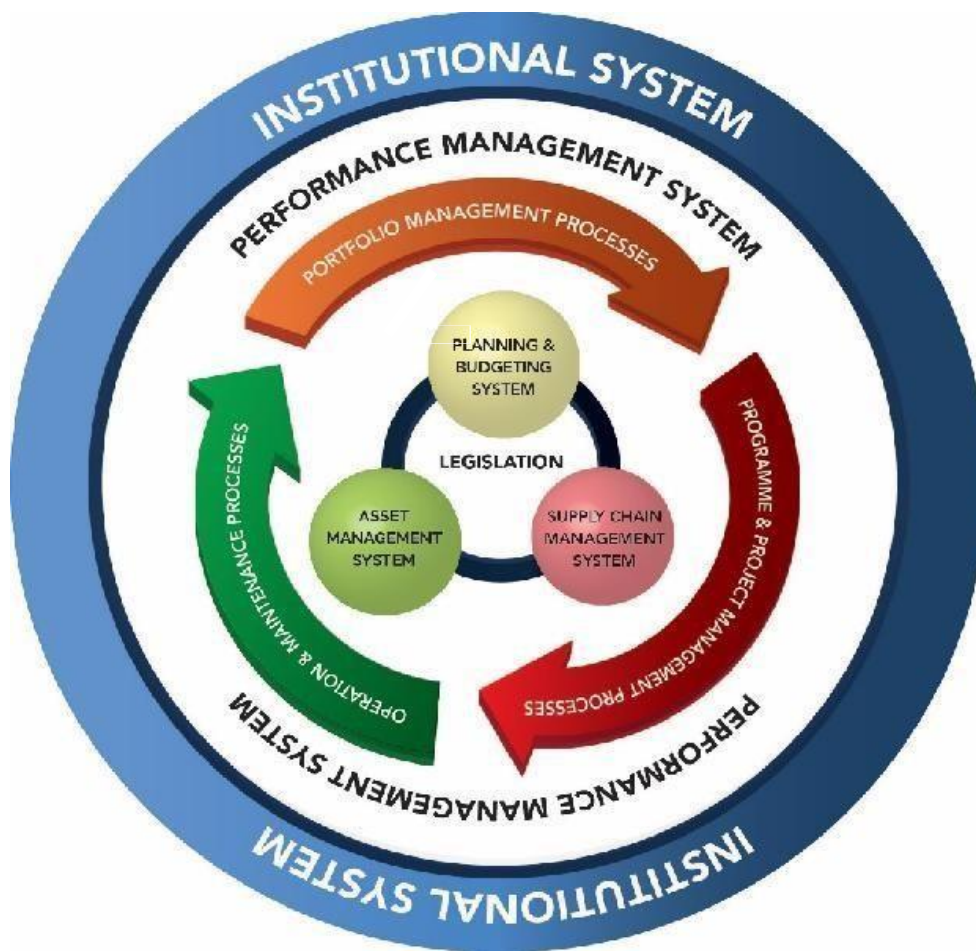
In trying to address the infrastructural backlog in the public sector, the Infrastructure Delivery Management System (IDMS) has been adopted by National Treasury through the Standard for Infrastructure Procurement and Delivery Management (SIPDM). This is meant to address the challenges in poor infrastructure delivery across the country. Public infrastructure is critical for economic development of every country in the world, infrastructure relates to airports, schools, hospitals, harbours, roads, water supply, sewerage systems and electricity networks. Railway and road networks, which provide transportation for people from one place to another, also plays a critical role in transporting procured goods from bidders to government institutions. Dams feed bulk water to municipal or water utility's treatment plants to ensure a clean and usable water supply to residents, industries and agricultural clients. Therefore, infrastructure is fundamental and foundational for government service delivery, hence its development and maintenance is important for economic development (Ambrose & Tucker, 2000). The maintenance carried out periodically by Eskom to its power stations to avoid load shedding is a typical example of infrastructure development and maintenance programmes.

Government institutions need various infrastructures in order to achieve their constitutional mandates and render service delivery to the citizens. Some state institutions use infrastructure to generate revenue to the national revenue fund while other state institutions rely solely on government grants to run their infrastructure needs. However, the government coffers have scarce financial resources for infrastructure development, which is a strong reason why strategic sourcing must be applied in government to leverage on cost savings. Future operation and maintenance costs taken into account when developing new infrastructure projects through three-year cycle budgeting. Due to scarce resources, infrastructural projects compete for limited budgets and have to be properly prioritised. Political prerogatives play a pivotal role in the above prioritisation, however sometimes it is based on objective decision-making processes which normally focuses on overarching state medium and long-term plans (National Treasury, 2015b).

The construction industry relating to public service delivery is executed in South Africa by the newly adopted IDMS, the system is mainly comprised of three core systems that present different processes and sub-processes which are: supply chain management (procurement); budgeting; a planning and asset management system with backward to forward linkages. The operation,

maintenance, project, programme and portfolio management processes surround the three core systems for efficiency purposes; therefore, together with the performance management these systems and processes constitute institutional infrastructure development and maintenance as depicted by Figure 4.6 below. For the purposes of enforcement, monitoring and evaluation legislation and performance management supports the IDMS model, which is where public procurement is strengthened. Founded in the Constitution, Chapter 3: Cooperative Governance, the IDMS is based on cooperation between client departments with their User Asset Management Plans (U-AMPs) for usage and budgets and the Department of Public Works Custodian Asset Management Plans (C-AMPs) for custodianship and mandate (Jackson & Hlahla, 1999).

Figure 4.6 The Infrastructure Delivery Management System model



Source: National Treasury (2015b)

4.7.2 Infrastructure delivery and maintenance procurement process

In IDMS the principles of South African National Standards (SANS) 10845-2 and SANS 10845-1 with the Construction Industry Development Board Act, construction projects register and a national register of construction companies are kept and observed at the beginning of a bidding process. Minimal changes are effected so that a specific construction project will conform to SANS 10845-2 and its Form of Offer and Acceptance are utilised (National Treasury, 2015b). Standard returnable documents for infrastructure procurement shall (where applicable) be prescribed to be

amongst the standard returnable procurement documents by the bidders. However, Standard Bidding Documents (SBDs) issued by a relevant treasury should not be used, especially if they conflict with the provisions of the standard returnable procurement documents for infrastructure.

4.7.3 Infrastructure Delivery Management System tender submission

There are two types of procurement methods in the IDMS, the first one, Method 3, takes into account only the financial offer and the preferential procurement offer. For this type of procurement method SANS 10845-3 with its Standard Conditions of Tender must be used. In exceptional cases, the validity period will be set at a maximum of twelve weeks, otherwise the norm is eight weeks. The second procurement method is Method 4, which takes into account financial offer, preferential procurement points and quality (functionality) (National Treasury, 2015b).

There are retention monies and guarantees that are required when bidding for infrastructure related contracts in the IDMS, these bonds normally range between 5 to 12.5 percent of the original contract value, excluding VAT. The bonds are there to guarantee performance accompanied by the stated attendant financial benefits, in the event of non-performance these bonds are withheld by the procuring government institution (National Treasury, 2015b).

There are retention monies and guarantees that are required when bidding for infrastructure related contracts in the IDMS, these bonds normally range between 5 percent to 12.5 percent of the original contract value, excluding VAT. The bonds are there to guarantee performance accompanied by the stated attendant financial benefits, in the event of non-performance these bonds are withheld by the procuring government institution (National Treasury, 2015b). Retention and guarantees monies, which are kept by the procuring government institution, do not have to exceed 10 percent of an amount due to a contractor. However, the overall retained amount should not exceed 12.5 percent of the total contract value.

4.8 Transversal contracting in public procurement

The below subsections will discuss transversal contracting as one method the South African government have adopted in its provision of public services. Some benefits and weaknesses of strategic sourcing will also be discussed.

4.8.1 What is transversal contracting in public sector procurement?

According to National Treasury (2015a), transversal contracting is a procurement process that centrally facilitates and manages frequently procured products under a contract concluded for government. Where the national treasury or provincial treasuries arrange the procurement of strategic goods, services and works centrally other three spheres of government institutions can ask to participate and purchase from it at negotiated discounted prices. In South Africa OCPO ensures that the alignment of complete public procurement practices meet the provisions of the PFMA and, in most cases, with the requirements of the MFMA. OCPO is expected to develop and give advice on procurement directives, administration of procurement legislation and to offer strategic direction and advice to national, provincial, local and other government institutions on the development, structuring and execution of their relevant term contracts.

4.8.1.1 *Benefits of transversal contract in public procurement*

All stakeholders and other government institutions with an interest in a particular product form a multi-disciplinary procurement committee. The OCPO facilitates the finalisation and execution of transversal contracts through consultative sessions that involve all interested parties and government institutions. After the transversal contract has been secured, all government entities across all spheres of government are expected to opt in to procure (National Treasury, 2015a).

Matters relating to specific provinces are given special attention by that province. If there are products commonly and frequently used by government institutions within a certain province, the provincial treasury of that province is empowered to institute a provincial transversal contract for those products within its jurisdiction. These contracts are not part of the national transversal contracts. However, the province concerned must ensure that they do not duplicate efforts where a national transversal contract exists. The process must ensure that directly interested government institutions be extensively consulted before, during and after initiation of any transversal contract nationally, or provincially. This will make sure that the product being procured meets the needs of the interested government institutions.

Efforts must be made to make sure that the participating government institutions get best value for money out of the proposed transversal contracts; which can only happen if the process was done thoroughly and market assessed properly by experienced category managers and product specialists. Initiation of any transversal contract must foster long-term relationships with service providers and ensure continuous monitoring of market dynamics to keep abreast with changes in the field.

Table 4.1 Extract of 2012/2013 transversal contract average prices

Vehicles Category	Retail price average (R)	Contract price average	Average savings %
Commercial light vehicle 2.0	330 700	259 000	22%
Sedan 1.4	203 200	133 200	34%
Commercial light vehicle 1.6	186 400	166 400	11%
Sedan 1.8	479 900	277 800	42%
Commercial light vehicle 2.5	352 900	259 820	26%
Sedan 1.6	246 000	170 000	31%
SUV 2.5	772 130	624 947	19%
SUV 2.0	297 990	233 492	22%
Commercial light vehicle 3.0	431 300	268 989	38%

Source: extract from National Treasury (2015a)

As can be seen in Table 4.1, major savings are evident on vehicles highlighted in orange due to the fact that contracts were centrally procured and prices were centrally negotiated with specific contract terms resulting in the 22, 26 and 38 percent savings on light commercial vehicles of 2.0, 2.5, 3.0 engine capacities respectively. Furthermore, on sedan vehicles savings of 34, 31 and a huge 42 percent on engine capacities 1.4, 1.6 and 1.8 respectively.

Furthermore, the savings depicted in Table 4.1 indicate that several other benefits can be derived when contracts are negotiated centrally, which includes avoiding duplication in procurement processes, reducing the burden on service providers of submitting different bids to multiple government institutions. Fostering long-term relationships with service providers, ensuring market certainty, facilitating the distribution of market intelligence, building policy administration and application consistency across government institutions and, most importantly improved contract management, are all benefits enjoyed by the government when using the transversal contracting system.

4.8.2 Weaknesses in implementing transversal contracting

Even though transversal contracts bring about several benefits to the government procurement, there are still weaknesses in the transversal contracts (National Treasury, 2015a). Products of unique and high value nature turn out to be a challenge; therefore, for the next three years and beyond, the government will be facilitating procurement of such products centrally, an example would be the mobile communication contract awarded to Vodacom SA. Furthermore, the OCPO will engage in the process of supervising other government institutions' procurement of unique and high value commodities. The promotion of local and regional economies will be achieved through centralised procurement and the application of the transversal contracting system throughout South Africa.

When contracts are centrally procured it indicates the weakness in individual government institutions that have failed on their own to gain cheaper prices, and therefore OCPO has to work on strengthening its support structures for better management of such contracts. Better transversal contract management ensures that e-procurement and automation to speed up procurement process will soon be realised. Furthermore, when it comes to reporting on public procurement, it is easier to collate and report on procurement data (such as market intelligence and service provider performance management reviews) when the contracts are centrally procured (which is currently not the case), therefore ensuring that reporting is done when due, with less effort (National Treasury, 2015a).

4.9 Green public procurement

Procurement that considers and minimises environmental impact during the public procurement of acquiring services, construction works and goods is called Green Public Procurement (GPP), which would fit in with Sustainable Public Procurement (SPP). GPP is when government institutions satisfy the citizens' needs through acquisition of goods, services and construction works, which are environmentally friendly as compared to conventional and traditional products that care less about environmental impact throughout its life cycle (Chopra, 2005).

4.9.1 Background to green public procurement

According to Chopra (2005), the concepts of “Life-Cycle Costing” (LCC), “Life-Cycle Analysis” (LCA) and “Total Cost of Ownership” (TCO) are the main aspects of GPP. Therefore, it requires procurement practitioners and service providers to consider not just the initial and basic purchase costs of a certain product, but also the total environmental and economic cost “from cradle to grave” of a procured product. The above concepts are new, however they are increasingly becoming part of the main objectives of mostly developing and developed countries for both private and public procurement. Reductions on maintenance and disposal costs are key motivators driving GPP. An example, such as procurement of electric cars by a government institution, would mean that environmental impact has been carefully considered. Using, maintaining and servicing electric car is considered to be cheaper: this would increase the car’s life-span and ensure environmental and economic balance. The specific principles of Sustainable Public Procurement SPP which consider social responsibility and social value in public procurement are also part of GPP (Hanks, Davies & Perera, 2008).

4.9.2 Key strengths and weaknesses of South African green public procurement

There are major weaknesses and strengths of South Africa’s current GPP and SPP policies, which can have severe negative and positive impact on future initiatives or research programmes in this regard. There are areas categorised as strengths in GPP, which should be encouraged and further rolled out to other government institutions. However, there are weaknesses of GPP where support, more resources and change or review of some of the legislation in order to encourage sustainable public procurement is still needed (Hanks et al., 2008).

4.9.2.1 *Strengths of green public procurement*

Green public procurement policies have been developed in various government institutions although the implementation is in its infancy especially as it does not have the support of the National Treasury as a custodian of public procurement. There are private sector organisations, which are championing GPP initiatives in South Africa; the next step is to bring these private sector organisations on board to help government institutions to intensify sustainable and green procurement. South Africa has current crises in electricity and water supply, so the government institutions led by the National Treasury should promote sustainable and green procurement like renewable energy and desalination going forward. Sustainable procurement has been only marginally introduced into South African public procurement through the preferential procurement application. Through this preferential procurement process, the South African National Accreditation Systems (SANAS) accredits BBBEE verification agencies to issue preferential procurement certificates.

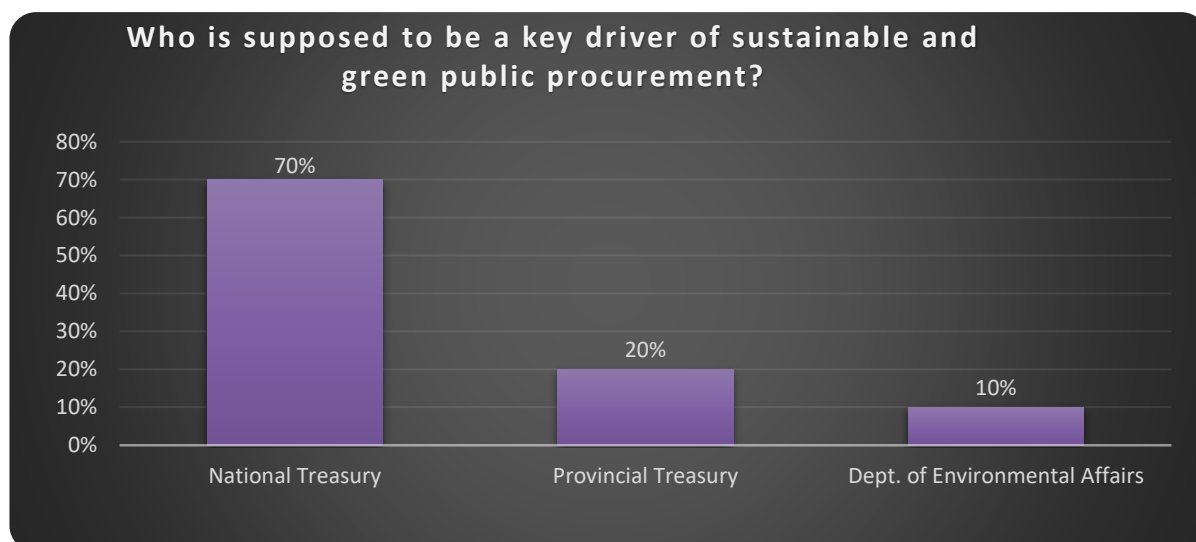
4.9.2.2 *Major drivers of South African sustainable and green public procurement*

The tensions between local and provincial governments might be seen as a hindrance towards full realisation of sustainable and green procurement, especially as local governments are at the cutting edge of service delivery thereby responsible for implement sustainable and green procurement projects. Political tensions, therefore, contribute to the slow progress of introducing and

strengthening green and sustainable procurement. Thus the role of the national government, represented by the National Treasury, is critical in mitigating tensions between local and provincial governments, especially if the province and the local governments are run by various political parties with different agendas on service delivery execution (Hanks et al., 2008).

Currently there are a few national legislative frameworks which allow local, provincial and national governments to initiate sustainable and green procurement programmes. However, support from the national government through the National Treasury is minimal. Therefore, guidance on sustainable and green procurement legislation and its standardisation is crucial for successful implementation of sustainable and green procurement programmes. Therefore, National Treasury is in the right place to enforce and promote sustainable and green procurement programmes through administering support legislation to consider the environment in most public procurement (Browne, 2007).

Figure 4.7 Major drivers of sustainable and green public procurement in South Africa



Source: Hanks et al. (2008)

In Figure 4.7, according to Hanks et al. (2008), the majority (70 percent) of the surveyed group of public procurement practitioners believed that a major driver of sustainable and green procurement should be the National Treasury as a custodian of public procurement. The second driver was provincial treasuries with 20 percent and lastly the 10 percent believed that the Department of Environmental Affairs, as the custodian of all environmental affairs in South Africa, should also partake in the sustainable and green procurement processes.

4.9.2.3 *Weaknesses of green public procurement*

According to Perera (2010), in South Africa, the sustainable and green procurement processes are not regulated or supported by the National Treasury nor the national government as a whole and there is no national strategy on how to execute this type of procurement. National Treasury should take the initiative by giving guidance on sustainable and green procurement legislation, which can

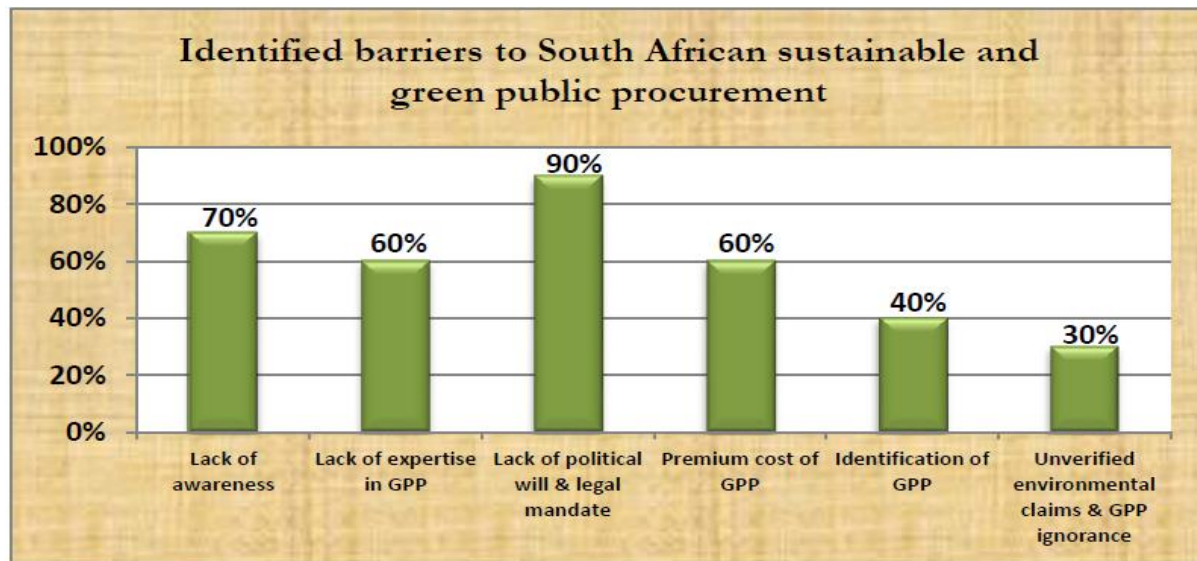
easily be incorporated into preferential procurement prescripts for successful implementation of sustainable and green procurement programmes. The National Treasury can also give political direction and motivation, thereby motivating all other government institutions to apply the sustainable and green procurement programmes.

Due to procurement increasingly being centralised in government institutions, some specification development and collaborative bidding opportunities have been lost along the way. There are very few government institutions that have developed implementation policies on sustainable and green procurement. Because of conflicting priorities, government institutions do not prioritise sustainable and green procurement in their programmes, and they regard such programmes as a luxury. Due to non-availability of national strategy, legislation and verification agencies public procurement practitioners find it difficult to include conditions of sustainable and green procurement as evaluation criteria and to assess whether the service provider has complied with the conditions set out. Sustainable and green procurement is hard to achieve because generally when procuring services, works and goods in public sector the LCC and TCO are not considered. That the focus is usually on the lowest price rather than on the long-term sustainability is another contributing weakness.

Due to the nonexistence of a national strategy and legislation guiding sustainable and green procurement, there is no expertise, awareness and skills required to champion and execute the sustainable and green procurement. Long-term contracts currently exist between government institutions and service providers with very difficult exit clauses, which are sometimes seen as a hindrance towards realisation of the full potential in implementing sustainable and green procurement programmes. The current implementation and interpretation of public procurement legislation prevents government institutions to implement sustainable and green procurement programmes, over the years National Treasury has never been taken to task in considering sustainable and green procurement as a priority.

4.9.2.4 Barriers to South African sustainable and green public procurement

Numerous obstructions prevent the successful execution of sustainable and green procurement as cited by Hanks et al. (2008). The survey on sustainable and green procurement is depicted in Figure 4.8 below. The survey outlines the frequency with which different barriers and concerns are identified (Turley & Perera, 2014). Figure 4.8 further reveals non-availability of political will to institute sustainable and green procurement in South Africa, which is confirmed by 90 percent of participants. Furthermore, the lack of awareness around green and sustainable procurement at 70 percent is also seen as a barrier to its successful implementation in South Africa. Other barriers, such as lack of expertise and premium costs payable when adopting it (both at 60 percent), are also identified.

Figure 4.8 Barriers to South African sustainable and green public procurement

Source: Turley and Perera (2014)

4.10 South African versus global e-procurement processes

According to the World Bank (2003), across the world, mostly in developing and developed economies, government institutions are starting to adopt e-procurement or e-government at a faster pace. However, research among scholars indicates that thus far, e-procurement is operationally very limited, especially in the public sector because the implementation is in the infant stage due to the “fear of the unknown” by the developing countries (Birks, Bond & Radford, 2001).

Accordingly, e-procurement is defined as using electronic processes (on various ICT platforms) for inviting bidders, implementing sourcing strategies and methods, conducting negotiations, placing orders, receiving goods and doing post-sales support. Currently, there are many e-procurement platforms used for different procurement processes, such as e-Reverse Auction, e-Tendering, e-Catalogue and others. However, e-procurement is intended to consolidate all these platforms into one single synergised platform aiming to achieve end-to-end procurement solutions. Although the achievement of a comprehensive end-to-end e-procurement solution is currently far from being fully achieved, e-procurement generally takes into account mixing different models in different procurement stages (DOIR, 2001 and S&A, 2003).

4.10.1 Barriers to a successful e-procurement implementation

Most government institutions promote the adoption of e-procurement, however there are very few success stories about pure e-procurement, in most cases e-procurement is supplemented by traditional paper-based procurement. As emphasised by Steinberg (2003), “Government e-procurement projects have been notoriously unsuccessful. Before launching an e-procurement project, government organisations should consider certain best practices as prerequisites to success.” E-procurement has been promoted as an “all solution driver”; however, studies conducted by the

OGC (2005) indicate that the savings are less those advocated by the e-procurement solution providers. Insufficient catalogue data and different business languages, technologies and platforms for use by public procurement practitioners has proven to be very difficult to overcome.

There are also difficulties ranging from the tensions between the “buying local” prescripts (designed to promote sectors within the local economy) and some efficiencies perceived to be brought about by bulk buying from multinational conglomerates (AGV, 2003). There are a few cases of implementation of e-procurement solutions by government institutions around the globe which delivered less benefits than expected (MacManus, 2002). Over and above the lack of benefits, some studies reported failures in the execution of e-procurement solutions in nations such as the United Kingdom, the USA, New Zealand, among others (AGV, 2003). As Heywood (2002) observed, the adoption and execution of e-procurement requires huge amounts of time, money and other resources, yet there is no guarantee that the full benefits will be achieved over time. Therefore, based on the above shortcomings associated with e-procurement in countries where it has been tested or implemented; one can safely conclude that public e-procurement is still in its infancy, which indicates that more needs to be done by government institutions to be able to operate at an optimal level for the adoption of solutions brought by e-procurement.

4.10.2 South African e-procurement initiatives

The following subsections will discuss various technological initiatives by the government of South Africa in its procurement of public services, goods and works. Initiatives include the popular IFMS, the e-Tender portal and the Central Suppliers Database.

4.10.2.1 South African public e-procurement (e-Tendering) initiative

As envisaged from 2015, the e-Tender portal of National Treasury provided information regarding all tender opportunities advertised by all government institutions. This is accompanied with summaries of information relating to the annual procurement plans of government institutions (including the state-owned enterprises). The coordination of local, provincial and national government on management and administration of portal users, content policy and functionality is managed by the OCPO with the ICT infrastructure provided by the SITA. It is expected that the e-Tender portal will provide functionality for subscribing to email alerts, notifications about tender applications and enhanced search capabilities. It is further expected that the electronic submission and evaluation of tenders will also be automated within a few years, resulting in full digitalisation of the tender process (National Treasury, 2015a).

The e-Tender portal ensures that, in the publication of tenders, the terms of reference, functionality description and other bid documents relevant and applicable to the advertised tender are included. The process of an e-Tender portal entails that, when the tender is awarded to a successful bidder, the award ought to be advertised again in the e-Tender portal to ensure that other interested bidders and stakeholders get an opportunity to appeal (if need be).

4.10.2.2 *Publication process in the e-Tender publication portal*

According to National Treasury (2015a), government departments, municipalities and public entities are currently publishing tenders in, at the very least, the Government Gazette. This practice continued until 31 March 2016 to ensure a stable and proper transition of the tender notices and awards process from paper-based to digitised. A National Treasury Instruction note was issued in January 2016 intended to formalise the minimum requirements on how procuring entities should approach the publication of tenders in the Government Gazette, the e-Tender portal, on electronic media, in print media and other channels. It is expected that the e-Tender portal will link with government's CSD which is a greater step towards the institutionalisation of an e-procurement solution, which will incorporate the Integrated Financial Management System (IFMS) and other important systems of government such as government payroll system called PERSAL.

There are several benefits of an e-Tender publications portal for government institutions and business sector at large, which include searching for, viewing and identifying all government tender opportunities at a single point of entry. As the e-Tender publications portal is introduced, competition and transparency will be enhanced among the service providers and access to government tender information made easier. The introduction of e-Tender publication portal acts as a bridging tool towards full digitisation of the procurement processes between the government institutions, service providers and private businesses. Furthermore, over time, there will be a reduction in duplication of costs by government institutions and private business willing to do business with the state (National Treasury, 2015).

4.10.2.3 *Integrated Financial Management System (IFMS)*

The IFMS acts as an e-procurement initiative for all South African government institutions, championed by National Treasury. The management of procurement, processing of payments, expenditure management, reporting and budget management are key fundamentals of the IFMS in trying to help all government institutions with a “one-stop shop”, integrated financial management system (National Treasury, 2015a). The IFMS can be designed to suit any size of government institution, depending on the government institution's needs. Some benefits are envisaged to be achieved by an introduction of the IFMS throughout the government institutions, as it is currently piloted within the National Treasury's procurement processes, benefits such as improved turnaround time in public procurement, better liabilities and debts management, consolidated historical procurement data to aid the future budgeting process. Furthermore, improved decision-making processes in public procurement, which leads to a reduction in financial transaction costs.

The IFMS is planned to replace the old, ineffective, high cost and fragmented systems used by all spheres of government. The system has been designed to consolidate all functionalities in one central point, thereby improving on government institutions productivity, effectiveness and efficiency. Better data quality, reduction in the usage of manual financial procurement systems, less duplication and less waste of resources are the four most important benefits of the IFMS.

Business intelligence and supply chain management are key and fundamental components of any organisation in private or public sector; hence, IFMS is built on four components. Thus pay-roll

matters, procurement matters, ledger accounts and data analysis will be handled in one central system, thereby empowering government institutions to move more quickly towards the ultimate goal of consolidated, efficient, e-procurement. The main aim of introducing the IFMS is to ensure that practitioners can be utilised in more strategic tasks rather than just being “paper pushers”.

Legacy systems such as LOGIS, BAS, PERSAL and others have reached their innovative capabilities and will be replaced by IFMS. It is envisaged that the next phase of IFMS will incorporate a full module of financial management, which will be rolled out by the year 2022. Operational procurement capabilities of the IFMS will become live, whereby modules of asset, acquisition, disposal, logistics and demand management will be operational, thereby consolidating all currently scattered financial management systems. The IFMS will develop a module that will incorporate the central supplier database which registers all business entities willing to conduct business with all government institutions (discussed in detail below).

4.10.2.4 Central Suppliers Database establishment

National Treasury developed the CSD and it has been implemented since 1 April 2016. Since then National Treasury instruction notes have been issued to supplement the implementation of the CSD. Integration with various government critical systems has been the core function of the CSD since its launch (National Treasury, 2015a).

Launching and applying the principles of the CSD is expected to ensure that procurement policy and its directives are incorporated and improved. Some benefits include the integration of some systems used in procurement, such as those from CIPC, SARS and DPSA among others, which makes sure that all government procurement processes are effective and efficient. A procurement requirement was that a service provider should provide their bidding documents inclusive of a new tax clearance certificate issued by SARS each time a bid was submitted. With the adoption and implementation of the CSD this ceases, as all bidders will be verified on CSD live against the SARS system, using the live link between the CSD and SARS systems. There is a huge reduction on costs and efforts of doing business with the state, as suppliers can register themselves once and then maintain their details on the CSD system free of charge.

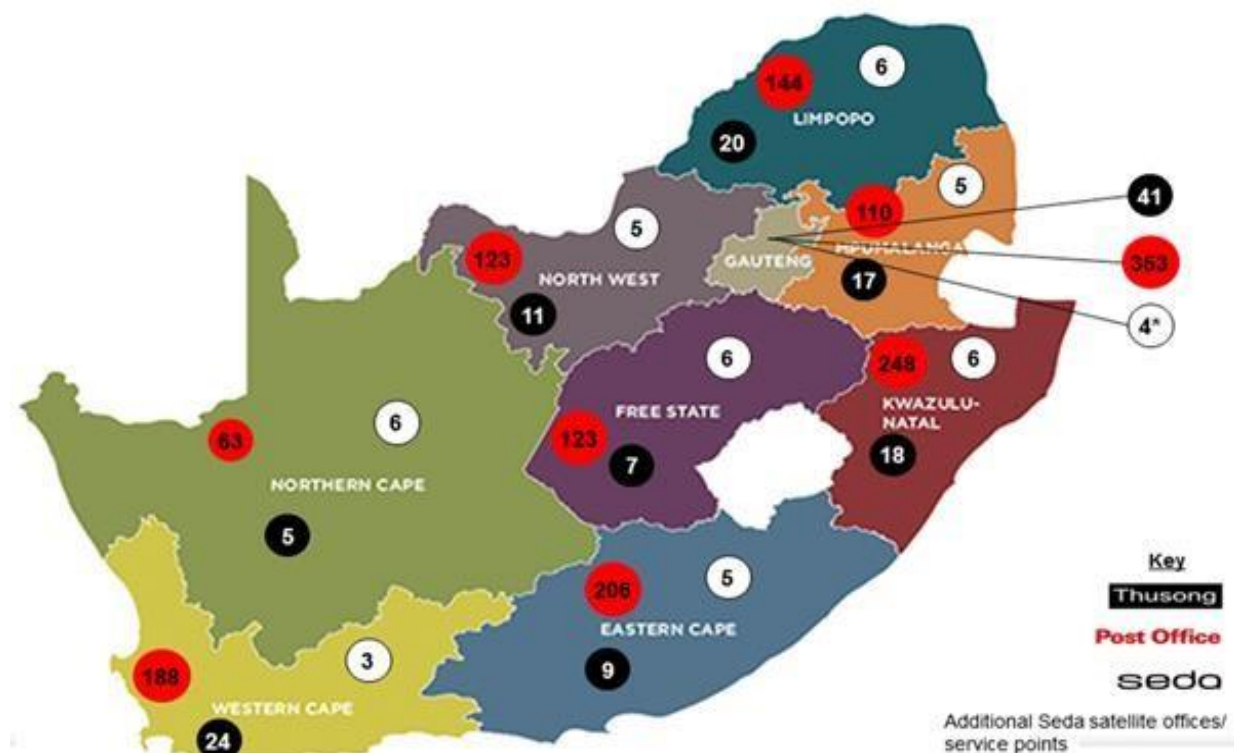
The CSD at a later stage will, among other capabilities, give service providers access to e-procurement platforms, e-Tender portals, e-auctions and other progressive procurement systems. Also a chance to bid on South African tender opportunities will be given to service providers wherever they are, around the world. CSD is equipped with timeous reporting capabilities, centralised procurement data, which improves transparency, and real-time procurement data for improved decision-making. CSD will form part of the anticipated integrated future government e-procurement where manual procurement processes will gradually be phased out. In future, the budgeting processes will be made easier, whereby government institutions will be able to identify trends, provide accurate procurement costs and forecasting, and follow proper budgeting principles.

Currently, the CSD is equipped with high-end security features, which, among other things, allows for the verification of banking accounts and sometimes uses biometrics for procurement practitioner and user verification purposes, thereby improving the government procurement system's integrity. Suppliers will be required to register once in a central suppliers' database, unlike previously, where

service providers were compelled to register in each and every government institution if they wanted to do business with that particular government institution. CSD was a great help to service providers because it saved time wasted in the duplication of efforts. Authentication and validation of CIPC information, tax clearance certificates, BBBEE certificates and many more links that are useful on the CSD will facilitate supplier relationship management and development in the future.

The suppliers will be able to do registration on their own, thereby ensuring that a supplier is responsible for their enterprise details, which must always be kept accurate, complete and up-to-date. Suppliers will be able to do a once-off registration in one of the help centres (like Post Office, Thusong Centres, Small Enterprise Development Agency (SEDA) offices and others) as shown in Figure 4.9. The process will ensure uniformity and automated verification of a service provider's information, which ensures that the fraud that is so prevalent with manual procurement processes is reduced. Not only verification of service provider's tax clearance status with SARS, but also business ownership and business registration with CIPC, proof of citizenship, verification of identity numbers with Department of Home Affairs, verification of government employee status with the DPSA, among others are all done online (National Treasury, 2015a).

Figure 4.9 Central Suppliers Database Help Centres



Source: National Treasury (2015a)

4.11 Contract management in public procurement

After a procurement method (discussed above) has been chosen and executed, contract management kicks in. Contract management primarily involves the contract life-cycle management,

which initiates a contract, the analysis and execution of a contract to improve operational and financial performance and ensuring that risk is minimised at all times in government institutions procurement (Brown, Potoski, & Van Slyke, 2006). As it is known, procurement management incorporates contract management because contract management ensures that all stakeholders in a contract deliver as per their contractual responsibilities as effectively and efficiently as possible. Contract management also guarantees that government institutions achieve best value for money out of every agreement entered into with any service provider, thereby ensuring that service delivery is optimally executed. The reason why contract management is part of procurement management, it is to make sure that the conditions and terms laid down during the needs assessment stage at any government institution are adhered to (Davison & Sebastian, 2009).

Due to increased pressure for public procurement to operate optimally and due to pressure of global trade, public procurement is therefore expected to reduce costs in its operational and financial performance. Furthermore, due to increases in procurement volumes to accelerate service delivery, public procurement has resorted to adopting principles of good contract management. Public procurement is furthermore under pressure to incorporate automation in its contract management processes and adopt more structured and formal contract management processes (Chopra, 2005).

An effective, efficient and successful contract management process should ensure that the pre-arrangements entered into by both the service provider and a government institution are adhered to the letter and that full benefits of using government resources in public procurement are realised. It should be clear that a contract is a two-way relationship, which is, the service provider has their own rights and obligations in a normal contract and so does the government institution. This process is done to avoid any future unnecessary disputes and surprises, therefore any changes to the scope of the contract, terms and conditions should be negotiated and settled quickly and amicably (OGC, 2008).

4.11.1 Benefits of contract management in public procurement

All government institutions, when procuring any services, goods and or works, enter into a form of agreement either implicitly through their actions or expressly through writing, both of which form a contract that must be adhered to by both parties (Davison & Sebastian, 2009). Having a proper contract in place does not automatically translate into services being delivered to the correct quality, time, quantity, place and price, for that to happen requires strong and correct contract management principles in place. Poor contract management can lead to undesirable impacts on the procuring government institution, such as damaged relationships with stakeholders (including suppliers) and negative public perceptions about public procurement processes – including fraud and corruption (Davison & Sebastian, 2009).

Improperly managed contracts may lead to further unnecessary litigation between a service provider and the government institution because of disputes that should be avoided through applying the correct contract management principles. Litigation can lead to cost overruns due to project stoppages, or worse, like the wrong products delivered or a total failure of service delivery by the respective government institution. For most of these reasons public procurement contract management is critically important if government is planning to accelerate service delivery (Wang & Bunn, 2004).

It is a requirement that each government institution must have a contract in place (preferably a written contract) every time a government institution executes its procurement process. This will help government institutions get better value for money, possibly making savings which can be redirected towards other important service delivery initiatives. Since service delivery is paid from public funds, accountability becomes critically important; hence, good contract management is very important as it helps to improve accountability and promote savings which can be used for further service delivery (Wang & Bunn, 2004).

As indicated above, contract management is properly executed when correctly applying the principles of Contract Lifecycle Management (CLM). This contributes positively towards helping government institutions and service providers to meet their contractual obligations thereby ensuring that service delivery is accelerated. There are benefits for government institutions in applying the principles of CLM, benefits such as mitigating risk, ensuring proper compliance and avoiding cost overruns (Swinney & Netessin, 2007).

Government institutions benefit from the standardisation of contract processing and using a common contract language, thereby improving efficiency and compliance in service delivery projects. When contract management is properly executed, it ensures that deviations from conditions and terms of the agreement are dealt with professionally and legally to avoid unnecessary litigation, which might hinder service delivery. Good contract management helps government institutions to manage service provider performance evaluation, which helps grow the evaluated service provider, thereby accelerating service delivery (Sonnekus, 2014).

One of the critical components of CLM is that communication is incorporated into the whole cycle, where six-month reminders ensure that service contracts do not expire before a new contract is in place so there are fewer service interruptions. The certificates of issuance are issued in order to ensure that renewal dates or re-advertisements are clearly communicated to both government institutions and service providers. Some contracts are highly confidential; therefore, CLM principles make sure that only permitted officials have access to contract documents as they are kept in central safe repositories to avoid leaking confidential information. Because records and document management is crucial and a matter of compliance in government institutions, CLM acts as a bridge in ensuring that the central repository system is in place which then ensures that the whole contract cycle is managed properly, where contract initiation, contract approval and the whole contract management is monitored properly (Sonnekus, 2014).

4.11.2 Challenges of contract management in public procurement

According to McCue and Pitzer (2005), the underlying causes of problems in contract management go beyond poor administration and contract lapse awareness. There are high level, generally accepted and commonly known root causes of problems with contract management in public procurement. These are discussed below.

Up to now government institutions have failed to adopt and recognise the value of contract management in public procurement. In government institutions, contract management is seen as a “shield” to guard against anything that can go wrong during the execution of service delivery

projects. Yet government institutions are expected to recognise contract management for what it is, which is, valuing the whole contract management cycle in order to get the benefits that come with proper contract management. Government institutions pay serious attention only during pre-contract negotiations and when there is litigation, yet the most important part of contract management is in its monitoring and evaluation in order to get the best monetary value for government spend.

Government institutions still do not see the need to invest in resources for contract management units. The support for resources in contract management units, such as professional development of those few employees is crucial. In most cases, contract management functions are “dumped” in the procurement unit, instead of establishing a separate and well-resourced contract management unit to manage the entire contract pool of a government organisation. A stand-alone contract management unit resourced with contract management specialists is bound to perform better than the contract management executed by the procurement units of government organisations.

4.12 General public procurement processes in South Africa

Public sector institutions are subjected to a high degree of scrutiny, thereby public accountability and transparency becomes an important issue in ensuring that procurement rules, processes, evaluation criteria and awarding of contracts are made public. Moreover, it is a requirement in South Africa that all service providers must be given the same opportunities to access specifications, terms of reference, general information, the deadlines for submission, how long a bid is valid and when it will be awarded. In government institutions, there is a requirement to advertise all prices, evaluation criteria, the opening of bids and closing of bids (National Treasury, 2004).

The process further entails that, once the lowest price bidder is read out during the bid opening stage, the government institution, which is commissioning the purchase of works, services and goods needs to ensure that the lowest price bidder still complies with the responsiveness requirements. Such requirements are meeting the specifications or terms of reference, the provision of samples (if applicable), declaration of interest (completing SBD/MBD 4 forms), among other responsiveness criteria (National Treasury, 2011a).

Like the private sector procurement practitioners, government institutions also conduct background checks and due diligence processes on bidding companies. In public procurement, investigative agencies such as the South African State Security Agencies and the SIU are used to thoroughly check the bidding company’s background, especially if the project is of a high monetary value. The government decided to keep the List of Restricted Suppliers and Tender Defaulters List which must be consulted to find out if there are any other investigations being conducted against the bidding company to make sure that should the winning bidding company will have no outstanding complaints against it (National Treasury, 2008).

The complexities of public procurement go beyond those of their private sector counterparts, in that regulations are applicable that are not applicable to public procurement prescripts. An example of these would be prescripts of the National Housing Policy, administered by the Department of Human Settlements, applicable when procuring the services of construction companies to build government sponsored houses. Another is the CIDB, National Home Builders Registration Council

(NHBRC), Correctional Services Act, which requires that government institutions must procure school furniture from workshops where the workforce is made up of inmates. Such conditions add to the existing complexities in public procurement; therefore, a public procurement practitioner should be able to scan all the prescripts that might be involved in a specific government procurement process (National Treasury, 2004).

To avoid too many administrative check-ups and compliance matters, government institutions are allowed to enter into a “backdrop” arrangement. Backdrop is a method of procurement where the procuring government entity opts to join in an existing contract pre-negotiated by either the district, provincial or national sphere of government. In many cases, transversal contracting processes include this backdrop arrangements and public procurement practitioners also use this when planning in order to accelerate service delivery. Although in municipalities, procurement practitioners are still not aware enough of this process to actually use it in procurement contracting. Contracts concluded using back dropping could save time and money; however, it is not always the case (National Treasury, 2008).

There are agreements that are concluded between the supplier and government institution that can be replicated to another organ of state with the service provider’s permission. Such arrangements are called “piggybacking” and, like other back dropping contracts, they are not subject to a new round of background checks, reference checks and other due diligent processes. Therefore, these arrangements shorten the conventional procurement methods. Normally, South African practitioners call this type of procurement as, “contracts arranged by another organ of State”. Regulation 16A of the Treasury Regulations of 2005 and the Municipal SCM Regulations states that “the accounting officer or accounting authority may, on behalf of the department, constitutional institution or public entity, participate in any contract arranged by means of a competitive bidding process by any other organ of state, subject to the written approval of such organ of state and the relevant contractors”.

The public sector when compared with private sector counterparts generally lags behind in terms of capacity building of its practitioners, the study conducted by the Institute for Supply Management (ISM) and McKinsey & Company confirms. According to the National Treasury Capacity Development Strategy (National Treasury, 2012) the emphasis is given to capacitation of financial management practitioners, which includes public procurement practitioners. However, due to the lack of skills among public procurement practitioners, government institutions have resorted to seeking training from private providers to upskill their procurement workforce and improve on public procurement operations. Such training interventions include employing more consultants, which strongly condemned by the AGSA as various state institutions are not performing their mandated duties due to heavy reliance on consultants (AGSA, 2013). As emphasised by Oughton (2007) that procurement is “not just a job: good procurement is a skill and it needs to be recognised as such”. More often than not, such skill is gained through learning by doing (experiential learning) especially when dealing with adult learners.

4.13 Summary and deductions

Drawing some conclusions from the above deliberations, this chapter discussed demand management with its important element of a needs analysis, core to any procurement, which is the beginning of the public procurement process, which ensures that funds needed to execute service delivery are available at the right time. Further discussions made it clear that the budget allocations should be linked to annual performance plans of procuring public goods, services and works. Discussion of vigorous public procurement processes and methods were discussed, such as bid document compilation, invitation and receiving of bids. Furthermore, lengthy processes of evaluating bids in general and against functionality, clearing bids and awarding the contract were intensively outlined.

The South African three-bid committees system with its roles, responsibilities and composition were critically discussed. It was shown that the three-bid committee system is regarded as very important because they oversee all the procurement stages. Further discussions showed how well the new strategic sourcing with its Pareto analysis in public procurement (where total cost of ownership plays an important role) works.

Infrastructure delivery and maintenance procurement was also discussed as a fairly new concept in public procurement of South Africa. Also critically discussed was the concept of transversal contracting procurement, which is where the national or provincial treasuries centrally arrange the acquisition of strategic infrastructure, goods and services and all other government institutions can ask to participate and buy at a very discounted and negotiated price. There was also a detailed discussion of global and South African green procurement, with special reference to sustainable public procurement, which considers the environmental impact in its procurement and processes. Further discussions of global e-procurement and, in particular, the South African (e-Tendering) processes showed that government institutions can benefit from using ICT platforms to execute procurement. The newly introduced CSD with its benefits and processes introduces e-procurement functionality, which will lead to better contract management against the post-bid signed service level agreements. Lastly, there was a summarisation of general procurement processes and methods executed specifically by the South African government procuring institutions.

The following chapter presents a research overview, design and methodologies adopted and used in this study.

CHAPTER 5

RESEARCH DESIGNS AND METHODOLOGIES

5.1 Introduction

This chapter follows on discussions in Chapter 4, where the study explored literature relating to the specific procurement processes used in South African public procurement. Through research methodologies, this chapter will try to explore research objectives relating to a comprehensive understanding of public procurement legislation and its challenges. In an attempt to find solutions to the above research objective, the researcher will use scientific research methods to conduct reliable and valid research outcomes. According to Naudé (2009:143), research design has been described as a process of cognisant research planning, gathering and analysing data with the intention of reiterating the main aim of the research being studied. The research strategy and methodology will be clearly outlined, which will result in a better collation of quantitative or qualitative data, depending on the research methodology used by the researcher (Sekaran, 2003).

Accordingly, the chapter will deal with overall research methodologies and designs employed in this study, which among other things will test whether or not there are issues in South African public procurement legislation and implementation, which are affecting service delivery negatively. The chapter will also identify challenges, and propose recommendations for legislative review, which should positively influence the delivery of public services. The chapter will further describe and discuss the application of the hybrid research method applied in this study. The reasons for using quantitative and qualitative methods will be briefly discussed.

The chapter will deliberate on the background of a research problem and will clearly state the research problem and its objectives in broader terms and discuss the problem-based research cycle in depth. The chapter will further outline two types of study variables (dependent and independent) and state the main study hypotheses. The chapter will also deliberate on the philosophy to be pursued in the research, where the research strategy and phases of research will be outlined. It will also argue the targeted population of the study, research sampling and collection of data methods to be utilised in this study. Furthermore, survey questionnaires, interview guides and document reviews will be discussed as some of the selected instruments for data collection, followed by various processes of data analysis. It will further discuss the study reliability and validity, limitations and delimitations of the research, bias elimination, ethical considerations, pilot study and finally, it will draw some deductions about the chapter deliberations.

5.2 Background to the problem statement

For a long time, government institutions have treated public procurement as a back office and a support function not as a strategic function. In addition, public procurement is treated as an administrative process guided by various standardised procedures, including strict legislation (New South Wales Government, 2002). Over decades the processes of public procurement have been affected by layers of reforms and changes; therefore, public procurement requires a fresh approach in order to deliver the urgently needed services from government (Pautz, Watermeyer & Jacquet, 2003).

Accordingly, transformation of the South African public procurement has created anxiety and has been seen as a threat and an opportunity by different citizens of the country. This created uncertainty in public procurement, which affected the mission and vision of government planning agencies such as the National Planning Commission of South Africa (NPCSA). A huge challenge for the NPCSA is the perception of many public servants and some scholars that some legislation, policies and guidelines are not yet properly and adequately aligned for its implementation by government institutions. Another challenge is an unethical conduct of public procurement practitioners, which is currently perceived to be very high in the public service in general.

It is accordingly imperative to develop solutions to some of the above-mentioned challenges with the intention of ensuring that there is proper financial management, good governance and ultimately, enhanced service delivery (Pautz et al., 2003). Scholars argue that government procurement operations are derailed by considerable challenges of coordinating and managing its supply chain management processes throughout the product value chain (Lee, 2002). As a result, the challenges mentioned above compel government authorities to develop strategies in order to ensure that competitive supply chains are developed. When coupled with capabilities that will add value to public procurement, these will therefore add value to the lives of end-users and citizens at large through improved service delivery (Lee, 2002:105; Ismail & Sharifi, 2006:436).

There are many glitches hindering the acceleration of public service delivery, among other things, the interpretation of legislation and its application by public sector officials and government entities in procuring goods, services and works. The proposed research will probe and critically explore some of the procurement legislation that governs various practices in public procurement in relation to service delivery. The probe is vital in evaluating whether or not some public procurement legislation requires a review, as those types of legislation are somehow perceived as hindrances in accelerating service delivery.

5.3 Problem statement and research objectives

The main problem statement and main research objectives will be presented under separate headings in the following paragraphs.

5.3.1 Problem statement

Against the above background, the primary research question can be stated as:

“Does South African public procurement legislation and its implementation have any inverse impact on accelerating service delivery?”

Therefore, it is important to research the possibility that some public procurement legislation and its implementation might have an inverse impact on service delivery acceleration mechanisms. The study will evaluate the possibilities of the public procurement legislation to be reviewed in order to enhance acceleration of service delivery mechanisms. For service delivery mechanisms to be accelerated, the South African government needs to review some of the public procurement legislation designed to fast-track service delivery.

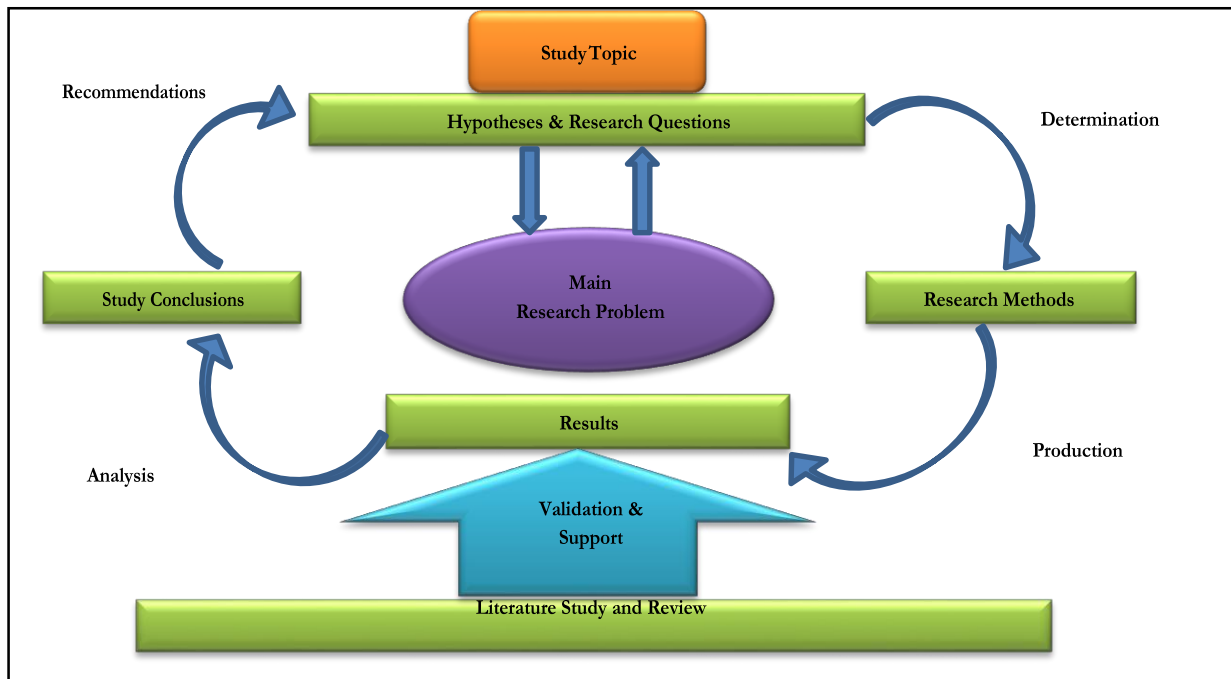
In an effort to determine answers to the primary question, the secondary research questions below will be answered by this study:

- a) Which legislation governs South African public procurement?
- b) What are the procurement challenges caused by public procurement legislation?
- c) What are the strategies to be used in order to mitigate procurement challenges and risks?
- d) What are corruption and fraud practices in public procurement and how to mitigate them?
- e) Which public procurement legislation needs to be reviewed?
- f) What model or framework for adoption would make public procurement more effective?

5.3.2 Problem-based research cycle

The research problem is the core of the entire study; therefore, research purpose and research structure have different but related elements which deal with the research questions, their goals and a review of the related literature. Accordingly, the researcher must ensure that an appropriate research strategy is developed and is then followed by proper research planning, data gathering, data interpretation, data analysis, recommendations and conclusions. Therefore, the only starting and unifying thread for all research elements in any rational research study, is a research problem (Leedy & Ormrod, 2005:15). This is supported by Creswell (2005), who stated, “without some sort of statement of a problem, the researcher can rarely go further and expect the research work to be fruitful”. In most rational and well-structured research studies, a research problem is identified right at the beginning, which is why the researcher undertook this type of study (Creswell, 2005).

As shown in Figure 5.1 below, distinct but related research elements are depicted for the researcher to prove the unifying nature of a research problem. Furthermore, in Figure 5.1, there is an identification of a problem based on a research cycle, which depicts the significance of a study to be researched. Furthermore, indicating that without a research problem, there will be no viable and scientific research study.

Figure 5.1 Problem-based research cycle

Source: Adapted from Kerlinger & Lee (2000)

5.3.3 Research objectives

The primary research objective can be stated as, “to determine whether South African public procurement legislation and its implementation has any inverse impact on accelerated service delivery”. Therefore, the secondary study objectives can be stated as follows.

The secondary research objectives are to determine:

- legislation that governs the South African public procurement
- procurement challenges caused by public procurement legislation
- public procurement legislation that should be reviewed
- strategies to be use in order to mitigate procurement challenges and risks
- an effective public procurement model or framework to be adopt
- public procurement fraud and corruption practices that should be mitigated.

5.4 Dependent, independent variables and hypothesis of the study

Figure 1.2 of Chapter 1 depicts the process-link between the dependent variables and independent variables. The impact of independent variables (procurement legislation, procurement processes, fraud and corruption) is highlighted on dependant variable (service delivery). Furthermore, Figure 1.2 describes the coherent relationship between the independent and dependant variables.

5.4.1 Dependent and independent variables

Major Independent Variables (**IV**) can be identified as:

- IV₁ : Government procurement legislation
- IV₂ : Procurement methods and processes
- IV₃ : Fraud and corruption practices

As a result, the dependent variable (**DV**) can be identified as: “The influence of procurement practices on service delivery”.

5.4.2 Hypotheses

Against the above problem statement background, Figure 1.2 demonstrates the formulation and relationships of the study hypothesis. **H⁰** stands for null hypothesis and **H¹** stands for an alternative hypothesis in each of the three hypotheses stated below:

Hypothesis 1

H⁰ : There are negative relationships between service delivery and public procurement legislation.

H¹ : There are no relationships between service delivery and public procurement legislation.

From the above hypotheses, null hypothesis will be rejected if the evidence from Chapter 6 of the dissertation suggests that there are no negative relationships between service delivery and public procurement legislation, and then the researcher will have to accept the alternative hypothesis. Otherwise, the researcher will have to accept the null hypothesis.

Hypothesis 2

H⁰ : There are negative relationships between public sector procurement methods, processes and service delivery.

H¹ : There are no relationships between public sector procurement methods, processes and service delivery.

From the above hypotheses, null hypothesis will be rejected if the evidence from Chapter 6 of the dissertation suggests that there are no negative relationships between public sector procurement methods, processes and service delivery, and then the researcher will have to accept the alternative hypothesis. Otherwise, the researcher will have to accept the null hypothesis.

Hypothesis 3

H⁰ : There are negative relationships between public sector procurement fraud, corruption and service delivery.

H¹ : There are no relationships between public sector procurement fraud, corruption and service delivery.

From the above hypotheses, null hypothesis will be rejected if the evidence from Chapter 6 of the dissertation suggests that there are no negative relationships between public sector procurement fraud, corruption and service delivery, and then the researcher will have to accept the alternative hypothesis. Otherwise, the researcher will have to accept the null hypothesis.

5.5 Research methodology and research design

The below subsections will discuss the details of how the study will be researched, where research methodologies and designs will be outlined. During the discussion, matters relating to research philosophy, strategy, approach and phases of the study adopted by the researcher will also be detailed.

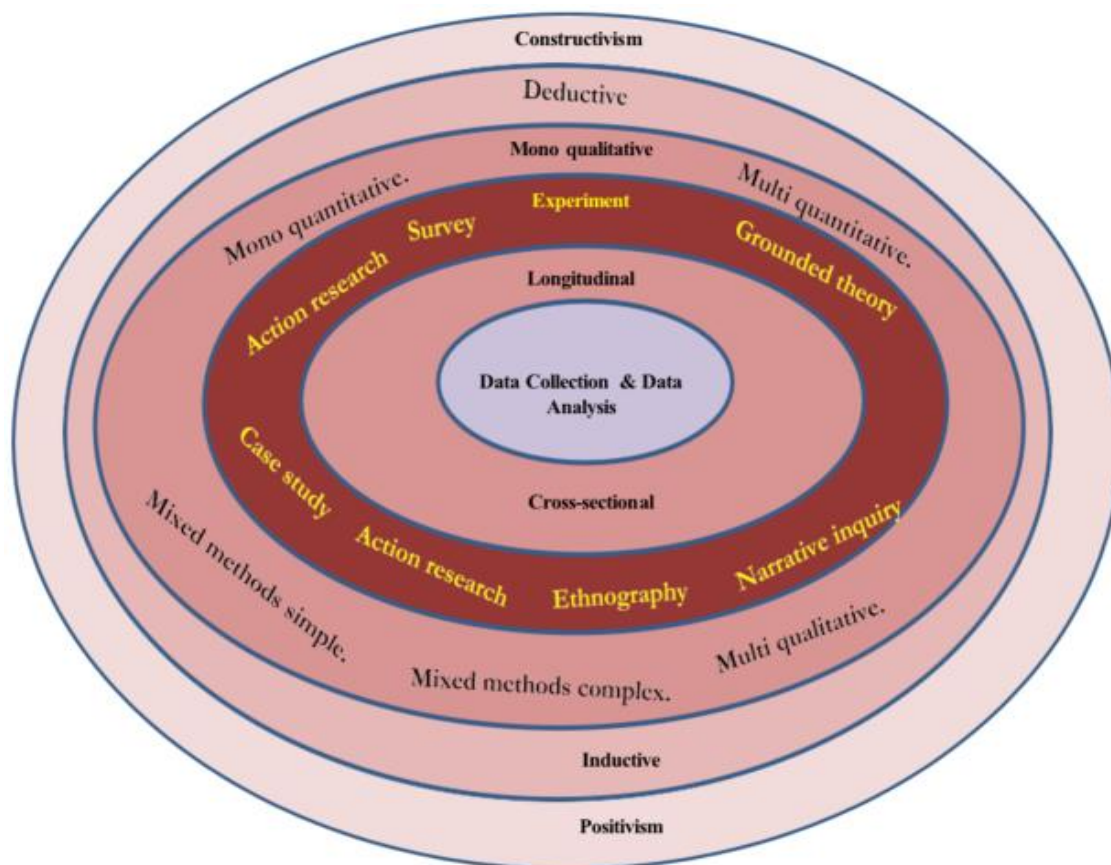
5.5.1 Research philosophy

Research philosophy describes how a research plan, the research problem formulation, data collection, data analysis, conclusions and recommendations are formulated. For this research study, the researcher adopted a research philosophy described by Saunders, Lewis and Thornhill (2012) as a “research onion” with its five distinct layers (Figure 5.2). The idea is to create a research design from the top down, beginning with the outer layers (adoption of research philosophy), detaching each layer down to the last layer that deals with (data collection methods); all these layers are dependent on each other.

According to Figure 5.2 below, the “research onion” concept was explained, as the researcher adopted it for its uniqueness and adding value to more illustrations. Saunders et al. (2012) developed a model of “research onion” which explains and describes the steps a social sciences researcher must undertake in order to develop an effective and sound methodology. This clarity is the main reason why the researcher chose to adopt this concept.

The first outer layer demands that the research philosophy be clearly defined; therefore, the study is classified to fall into either positivism (the phenomenon independently exist without being studied) or constructivism (the phenomenon exist because it was studied). The second inner layer describes the research approach to be implemented in the study, whether the study will adopt an inductive (qualitative) or deductive (quantitative) approach. The third inner layer defines research strategy which was adopted for the study. Furthermore, the fourth inner layer indicates the time zone utilised during data collection. Cross-sectional time horizon formed a major component of the research, because the researcher collected data at the certain point for a specific time only, as opposed to the longitudinal time horizon, which collects data repeatedly for a long period. The fifth inner layer indicates the identification of data collection methods; the researcher used both questionnaires and interview guides because they were using a hybrid research method.

Figure 5.2 The Research Onion Layers



Source: Adapted from Saunders et al. (2012)

5.5.2 Research strategy

Research questions are normally answered by using a general plan that is referred to by Saunders et al. (2003:90) as a research strategy. Research objectives generally guide a researcher to choose the most appropriate research strategy, one that will work best for the type of research under study. Interviews and survey questionnaires were utilised in this study. The study was a projectable one because it indicated that the study results could be safely generalised against a whole population in South African public procurement and its practitioners; the generalisation of the study results is also confirmed (Kaden, 2006:121). The survey questionnaires and semi-structured interviews methods were selected simply because they were flexible, efficient and the capable of generalisation (McMillan & Schumacher, 2006:233).

5.5.2.1 Research approach

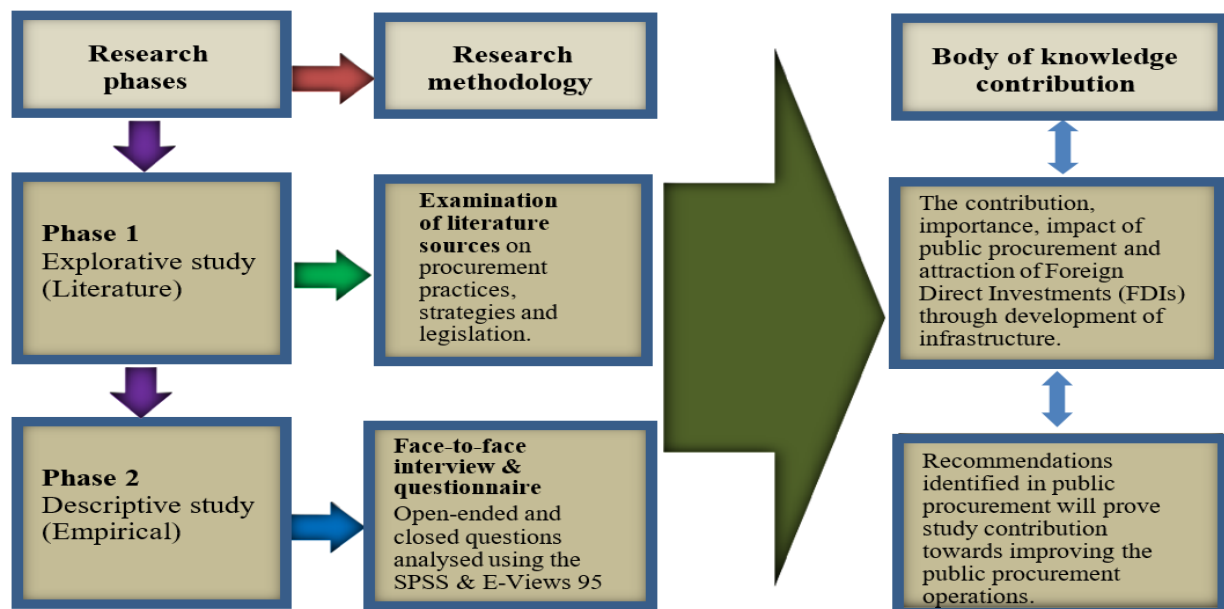
The research was conducted in the form of survey, which among other things gives a researcher an opportunity to interact with various respondents to get opinions, facts and attitudes to support or not support the hypothesis and further support quantitative data analysis (McDaniel & Gates, 2001:30). Furthermore, the carefully selected respondents were interviewed and transcripts were

extracted to support qualitative data analysis; which is a process favoured by (Zikmund, Babin, Carr & Griffin, 2012:67). Therefore, questionnaires and interviews were the appropriate techniques for conducting research to determine whether the public procurement legislation and its implementation has any inverse impact on accelerating service delivery in South Africa.

5.5.2.2 *Phases of study and its expected outcomes*

Figure 5.3 below, is an overview of two phases embarked on during the research study and their expected outcomes. Literature exploration was used to collate and analyse data in phase 1 (literature study). Data collected using interview guides and survey questionnaires conducted in the form of direct interviews were used for data collection in phase 2 (empirical study). Finally, Figure 5.3 concludes with the contribution to the study, where the importance, impact and challenges of the public sector procurement are briefly summarised.

Figure 5.3 Different phases of the study



Source: Bryman, Teevan & Bell (2009)

5.5.3 Research design

As described by Gatrell, Bierly and Jensen (2006), the research design is an important process in the study, where ideas, the research question and some interests are transformed from being a thought, to be purposeful and meaningful research, especially in the social sciences. The research was adopted to use explorative and descriptive research techniques in the quest to test the hypotheses above. As explained by Kumar, Ozdamar and Zhang (2008:10) that in order to uncover any relationships between existing variables, a researcher ought to adopt a study approach that is cross-sectional; where data is collected by means of distinct but related variables which are matched. Accordingly, a cross-sectional approach had to be adopted to determine a rapport between service delivery and procurement practices.

The study will apply both quantitative and qualitative research designs, where triangulation was attained by collecting quantitative data through structured questionnaires where respondents were sometimes asked to justify their responses. Qualitative data collection was executed using the interviews. The structured questions (quantitative data) aimed at to testing the degree to which public procurement practices and strategies implemented in South Africa are hindering service delivery. By using qualitative questions, an exhaustive understanding of procurement processes and strategies in South African public sector procurement was sought. The reasons for employing both research designs in the study are to achieve: (1) complementary results, (2) triangulation, (3) development and (4) expansion in detail.

As clarified by Greene (2007), that every research method utilised in any study should fall between extreme quantitative or extreme qualitative. Sometimes it is also possible to specify whether a study tends more towards qualitative or quantitative methods. This would influence the decision on which process to adopt in terms of collecting and analysing data. Table 5.1 below provides a basic view of key differentiating features between quantitative and qualitative research designs.

Essentially, Table 5.1 provides a comparison of the main characteristics of two research designs. As indicated earlier, a blend of quantitative research and qualitative research methods were used by the researcher. Most researchers choose one or the other method; however, both methods were utilised for this study to capitalise on the strengths of both and derive rich and diverse data.

Table 5.1 Differentiating features of qualitative research and quantitative research methods

Quantitative methods	Qualitative methods
Data is received as statistics and numbers	Data is received as transcripts, recorded words from respondents and observations
Many subjects or cases in the study	Usually few subjects or cases in the study
The hypothesis comes at the beginning of the study	The full research picture (meaning) is discovered and organised towards the end of the study
Tables, statistics and charts are used to analyse data and how they relate to the study hypothesis	Extracting themes, generalisations from evidence, consistent and coherent aim
Outcomes are normally singular, objective, and not influenced by the researcher	Outcomes are normally varied and objective as viewed study respondents
The study is independent from the researcher	The study is mainly dependent on the researcher
The study is mainly unbiased and value free	The research is mainly value overloaded and partial
Theory is sometimes deductive and causal	Theory is sometimes inductive and either non-causal or causal
Research procedures are vague and duplication is common	Research procedures are specific and duplication is rare

Source: Adapted from Naudé (2009)

5.5.4 Research methodology

The below subsections will discuss details of the rationale behind using quantitative, qualitative and hybrid research designs in the study.

5.5.4.1 *Rationale for a quantitative study*

Gray, Williamson, Karp and Darphin (2007) define quantitative methods as a scientific investigation which takes into account both statistics and experiments in order to quantify measurements of performance in the study. This study applied the principles of quantitative research methods. At the beginning the researcher focused on the development of a scientific problem statement, which then lead to the development of hypotheses to be tested as stated in Chapter 1. Johnson and Christensen (2010:33) confirm this process. The study tested the researcher's assumption that there are negative relationships between service delivery and public procurement processes; therefore, the researcher saw fit to apply the principles of quantitative methods.

5.5.4.2 *Rationale for a qualitative study*

The research processes are the primary focus of any qualitative study researcher, other than focusing on the research outcomes or findings (Johnson & Christensen, 2010). This research adopted qualitative methods because it makes it easier to understand and capture rich and necessary data, personal experiences and perceptions that would have not been extracted while using quantitative methods alone. The researcher adopted the qualitative method, which is increasingly and widely used by researchers as confirmed by (Gray et al., 2007). While trying to test relationships between different but related variables, qualitative methods are best suited to achieve high quality results compared to quantitative methods as Johnson and Christensen (2010) argued; therefore, in this study the relationships between public procurement legislation, its implementation and service delivery were discussed.

5.5.5 Application of the hybrid research method

Cavana, Delahaye and Sekaran (2000) describe mixed methods (hybrid methods) as research that applies both logical hypotheses (quantitative methods) and interview processes (qualitative methods). Therefore, as a research method, the process involves an application of specific methods of collecting data and analysing data, such methods use qualitative and quantitative procedures for the entire research study. Hence, the process collects, analyse and mixes both qualitative and quantitative data to prove or disprove the study hypothesis and get meaning from how the respondents perceive the phenomenon under study. The reasoning behind using the hybrid research method is to mitigate possible shortfalls of either the quantitative or qualitative method and to capitalise on the strengths of each of these research methods in order to effectively address complicated research areas such as public sector service delivery mechanisms, as supported by Green (2007).

The overall research design is normally strengthened by an integration of methodological approaches, in order to ensure that one approach's weaknesses are offset by another approach's strength, as such, the results of the study is more convincing as compared to a situation where only

one approach is utilised (Creswell & Clark, 2011). Greene (2007:125) defines the integrated mixed research methods as those “methods which intentionally interact with one another during the course of the study and as a result offer more varied and differentiated design possibilities”. As a result, the researcher used qualitative data, which uses open-ended questions (interview) to extract data from the respondents, and the researcher further used quantitative data, which uses close-ended questions (questionnaires) allowing respondents to elaborate on each answer provided and allows the interviewer an opportunity to make follow-up questions, Brannen (2004) also supports this process.

Qualitative data was analysed using coded words, which were grouped into themes and categories; furthermore, in a quest to transform interview transcripts; the researcher relied on qualitative Likert scale ratings for linking interview transcripts of data into quantitative polynomial data (Cavana et al., 2000). There are several weaknesses in each research method, for example, quantitative methods fall short in that they do not fully understand the context in which respondents provide their answers, while qualitative methods often “push” the ideas of the researcher, which could be regarded as biased. It is with the above and other reasons that the researcher chose to explore both methods simultaneously in order for qualitative methods strengths to offset the quantitative method’s weaknesses and vice-versa. Similarly, qualitative methods have several weaknesses such as difficulty in making general conclusions about the results to larger population due to the small number of respondents interviewed (Graff, 2011). This is why the researcher opted to use the hybrid research method.

The researcher’s premise for using hybrid research methods was to capitalise on the strengths of both designs and derive rich and diverse data, which could have not been derived if only one research design method was used. In view of the above advantages, the dissertation was conducted using the mixed methods type of research methodology.

The application of a hybrid research method was driven by the need for pragmatism, the researcher was motivated by the apparent shortcomings of the quantitative method when used alone to address complicated research such as public sector service delivery mechanisms, as well as other strategic government priorities. The two methods were given equal status when combining them. They were combined to check whether there was a correlation when addressing different aspects of the main research question and developing the qualitative component that facilitates sampling for the quantitative component.

The researcher contacted the offices of the responsible officials to secure a telephonic or personal interview and to ensure the participants’ understanding of the study, before distributing the questionnaires via the online survey system and conducting personal interviews. The completed survey questionnaires (quantitative) were received using an online survey system and interview responses (qualitative) were conducted personally and telephonically. Semi-structured interviews and questionnaires were chosen as appropriate instruments for collecting data. The questionnaire employed a five-point Likert scale and was divided into two sections, namely demographics and procurement processes related questions. The questionnaire was structured to represent a Likert scale, which comprised of categories of “strongly agree” up to “strongly disagree”. To achieve convenience in making measurements, the researcher adopted the widely used Likert scale method, as further confirmed by Maree (2008:167). The interview guide was also used during the qualitative data collection.

5.6 Research process

5.6.1 Target population

The targeted population for the study were procurement employees, ranging from Chief Directors in SCM to SCM practitioners of the nine (9) national, provincial major service delivery Departments of Health, Public Works, Human Settlements, Social Development and Transport and one large municipality from each of the nine (9) provinces as shown in Table 5.2 below.

Table 5.2 Distribution of respondents' categories

Institution	Chief Director: SCM	Director SCM	Deputy Director: SCM	SCM Practitioner	TOTAL
National Health	1	1	1	11	14
National Public Works	1	1	1	11	14
National Human Settlements	1	1	1	11	14
National Social Development	1	1	1	11	14
National Transport	1	1	1	11	14
Health for 9 provinces	9	9	9	20	47
Public Works for 9 provinces	9	9	9	20	47
Human Settlements for 9 provinces	9	9	9	20	47
Social Development for 9 provinces	9	9	9	20	47
Transport for 9 provinces	9	9	9	20	47
Large municipalities in each of 9 provinces	9	9	9	20	47
					352

Source: Researcher's own

5.6.2 Sampling

Since it is not possible to interview or survey the whole relevant population at a given time, a sample is mostly used in social sciences research studies. For this study, 352 employees were sampled. Furthermore, a sample is a representation of the entire relevant population (Saunders et al., 2003:151). Accordingly, it is a worthwhile option to survey or interview a sample to ensure that the whole population is generalised by study results. Therefore, more formally, sampling is a process where, in order to conduct a scientific study, subjects of the entire population are represented by a

few selected subjects which enables a researcher to draw some conclusions in relation to the entire population (Zikmund & Babin, 2007). An advantage of the sampling process is that fewer subjects get studied which makes it easier to conduct the research with lower costs, less time and, in most cases, more accuracy (Saunders et al., 2007). Therefore, for the above reasons, the researcher decided to sample (using appropriate sampling methods) fewer public procurement practitioners from the entire population of the South Africa government institutions to partake in the study.

a) Sample size

Following on the sampling methods discussion, a sample size is therefore an actual number of participants that are earmarked to be studied. Confidence level, variability degree and precision level are the factors that determine a sample size (number of respondents) (Zikmund & Babin, 2007:451). In this study, a sample size of 352 respondents was targeted, however a high response rate of 96 percent amounting to 338 respondents. This high response rate was in spite of the reservations of participants who were scared of interviews that are conducted face-to-face and some were scared to return questionnaires electronically.

b) Sampling techniques

As clarified by Saunders et al. (2007:207) that to have a correct sample size, a researcher is expected to use appropriate sampling methods, which are normally grouped as non-probability sampling (judgmental) and probability sampling (representative). Table 5.3 lists different forms of sampling techniques.

Table 5.3 The sampling methods

Non-probability sampling	Probability sampling
Snowball Quota Judgmental Convenience	Cluster Systematic Stratified Simple random

Source: McMillan & Schumacher (2006:119)

For this research, a non-probability sampling method were utilised; where the researcher knew very well that the selected sample to be studied did not represent the entire targeted population. Non-probability sampling is generally not complicated, less expensive and relevant when the researcher is not intending to intensively generalise the findings (Cohen, Manion & Morrison, 2007:113). Therefore, the researcher opted to use the non-probability sampling technique called convenience sampling because participants were normally at the right place and right time when needed, which was convenient for the researcher to access and study the respondents within a given time frame. In this regard, the three spheres of the South African government employed all the respondents during the study.

5.6.3 Research instruments

Data collection is critically important to any research study; however, of utmost importance too, is the data efficiency, data accuracy and data collection costs. Therefore, research instruments are used for data collection and sometimes data analysis too; these tools must be valid and reliable. In this research, collection of quantitative data was done using questionnaires and collection of qualitative data was done using interview guides, a notion supported by Saunders et al. (2007:145).

5.6.3.1 *Advantages and disadvantages of questionnaires*

In order to collect valid and reliable data using quantitative methods, a questionnaire is commonly and widely used, as it is very convenient and easy to execute. In this study, a questionnaire (Appendix C) was constructed using a Likert scale method, which is based on five point ratings, for the respondents to choose one option per question (Maree, 2008:167). Using a questionnaire is very easy and quick therefore; a researcher can collect huge amount of quantitative data in a very short period, no need for trained interviewers meaning that there are minimal costs involved. There is a high level of uniformity as the questions asked of the first respondent are the same as those of the last respondent, with no follow-up questions.

Furthermore, there is no immediate pressure for a respondent to respond immediately, unlike in the interview process where an interviewee is expected to provide an answer at once (Wilkinson & Birmingham, 2003). It is relatively easy to analyse data from the questionnaire using computer software, due to the homogeneous questions across all respondents (Babbie, 2007:308). In contrast, disadvantages associated with using questionnaires (which are normally offset by its advantages) is that most organisations do not allow respondents to use their work time to complete the survey questionnaire. Furthermore, questionnaires do not allow the respondents to ask clarity questions if they do not clearly understand the question and some semi-literate respondents may not complete questionnaires as they struggle to write or read (Wilkinson & Birmingham, 2003). It is with the above disadvantages, and others, that the researcher opted to use the hybrid research method, where the use of an interview guide to interview respondents offset some of the disadvantages of using questionnaires.

5.6.3.2 *Advantages and disadvantages of interview guides*

There are three formats for interviews when they are used for qualitative data collection, they are the unstructured interview, the structured interview and the semi-structured interview (Gall, Gall & Borg, 2003). In this research, qualitative data collection was done through interviewing a few selected public procurement specialists and experts spread across the country, in order to ensure fair representation of gender and location of interviewees. During the interviews, the researcher remained the leader and the driver of the interview process, coupled with some flexibility on both sides with the interviewee and interviewer able to ask follow up questions.

There are several benefits that come with the use of semi-structured interviews, information relating to observable features is accurately captured, and, for example, an interviewee sometimes cannot lie about their gender, current location, race and other observable features. There are reactions that cannot be extracted on a questionnaire, non-verbal reactions such as body language, which

sometimes give an indication that a respondent is not comfortable with the question. In contrast, sometimes the body language can also indicate that a respondent is enthusiastic about the topic under discussion. There are relatively few distractions such as texting, social media, among others during semi-structured interviews, thereby making a researcher a driver of the interview process and keeping interviewee focused until completion, on time (Turner, 2010).

Semi-structured interviews possess a major disadvantage because of the high cost to administer it, in most cases. A pool of interviewers must be employed, trained and paid from the research budget. Unethical interviewers can input incorrect or biased data into transcription, especially on high level topics that are studied. In most cases, data is collected through hand-written on paper or voice recorder, which means that data needs to be captured into a computer program and transcribed, as a result this process can prolong the data analysis process. The number of respondents is normally limited to a number of interviewers trained and employed at a given time. Interviews can only be located within the reach of the interviewers, if far locations are chosen more travelling and accommodation costs will be incurred for interviewers (Turner, 2010). Keeping in mind the above disadvantages of qualitative data collection method (semi-structured interviews) that the researcher opted to use the hybrid research method using questionnaires to get data from respondents which offsets some of the few disadvantages of using semi-structured interviews (Gall et al., 2003).

5.6.3.3 *Documents to be reviewed*

The researcher intended to peruse, review and study various documents related to public procurement. The documents reviewed range from journals, relevant books, and any public procurement legislation and service delivery related content. Court judgments relating to public procurement were intensively analysed to get a gist of what public procurement practitioners are or are not doing correctly. Furthermore, legislation relating to public procurement was thoroughly analysed and reviewed with the hope of identifying legislation that has an adverse impact on accelerated service delivery. Lastly, a review was conducted of published material, newspaper articles, periodicals, applicable theses and other key public procurement documents issued by government institutions, such as National Treasury practice notes on public procurement, circulars on public procurement, guidelines on public sector procurement as well as internet searches relating to the subject matter under study.

5.6.4 Data collection instrument items

Quantitative data collection was done using questionnaires, which were designed in English; the questionnaire was named Appendix C, consisting of Section A with its five (5) questions, which sought to get data relating to respondents' demographics and Section B gathering data relating to public procurement with its 53 questions. All questions were easy to comprehend, concise and related to the study objectives, in total the study had 58 questions (Section A and Section B).

Qualitative data was collected using interview guides, which were developed to be at a high-level to capture all the themes of the study. The interview guide was named Appendix D, the first set of questions capturing demographics of respondents and the second set gathering public procurement information with its 30 questions categorised into five (5) different themes. The interview guide was designed as a semi-structured interview which meant that it had both unstructured and structured

interview features. Therefore, core questions were pre-prepared by the researcher before any interview was scheduled in order to ensure consistency through similar questions for all respondents. Features of both unstructured and structured interviews helped the researcher to give an opportunity to respondents to ask follow-up questions and for the respondents to elaborate more on their answers.

5.6.4.1 *Administration of data collection instruments*

At first, the questionnaires and interview guide were hand delivered to the respondents whose offices were closer, some were also emailed to the respondents in order to sensitise them and for them to be ready to take up the survey or the interviews. Walliman and Baiche (2005:282) also support the practice of personal delivery of questionnaires and interview guides; as it ensures that the respondents have an opportunity to ask clarity questions directly from the researcher or interviewer, which also sends reminders effectively. Personal delivery is also important in the sense that the study purpose is outlined face-to-face and a personal explanation of how beneficial the results are to the respondents and how little the time there is to complete the survey. Simple guidelines were given verbally to respondents to correctly fill in the survey and how to contribute in the interviews. During the interviews and questionnaire distribution, respondents showed enthusiasm in attending the interviews and completing the survey questionnaires. Furthermore, the researcher drafted a concise and self-explanatory respondents' information sheet (Appendix B), giving the reasons for conducting such a study with an assurance of confidentiality during the data gathering, analysis and reporting stages.

5.6.4.2 *Data gathering*

As a researcher working in the field being studied, knowing how hectic and busy the public procurement practitioners can be, the researcher gave sufficient time to complete the questionnaire (30 days). Furthermore, during the scheduling of interviews, the researcher was considerate to ensure that the interviews were scheduled only during times convenient to respondents. All respondents complied with the due date to return the questionnaires and to the scheduled interview dates. The study sample size was 352 respondents; however, a high response rate of 96 percent or 338 respondents was received. Response rate is referred to as a representativeness guide of sampled respondents (Babbie, 2010:272).

The empirical study presented the researcher with primary data, while literature study presented secondary data. As for the secondary data, the researcher conducted semi-structured interviews with selected public procurement practitioners and for primary data, the researcher conducted surveys using questionnaires. Material used in the literature review was retrieved from sources like conference papers, journal articles, the internet, South African public procurement legislation, policies, circulars, instruction notes, relevant books, guidelines regulations and other prescripts issued by National Treasury and other public institutions, such as the DTI.

5.6.5 *Data analysis*

In order for deductions and sense to be made out of data collected through interviews, observations, questionnaires or any other secondary sources like literature review; data analysis must be thoroughly

conducted (Painter & Rigsby, 2005). Therefore, data analysis can be roughly described as a process of converting raw data from various sources into useful information that can give meaning and value to the study (Brassington & Pettitt, 2006).

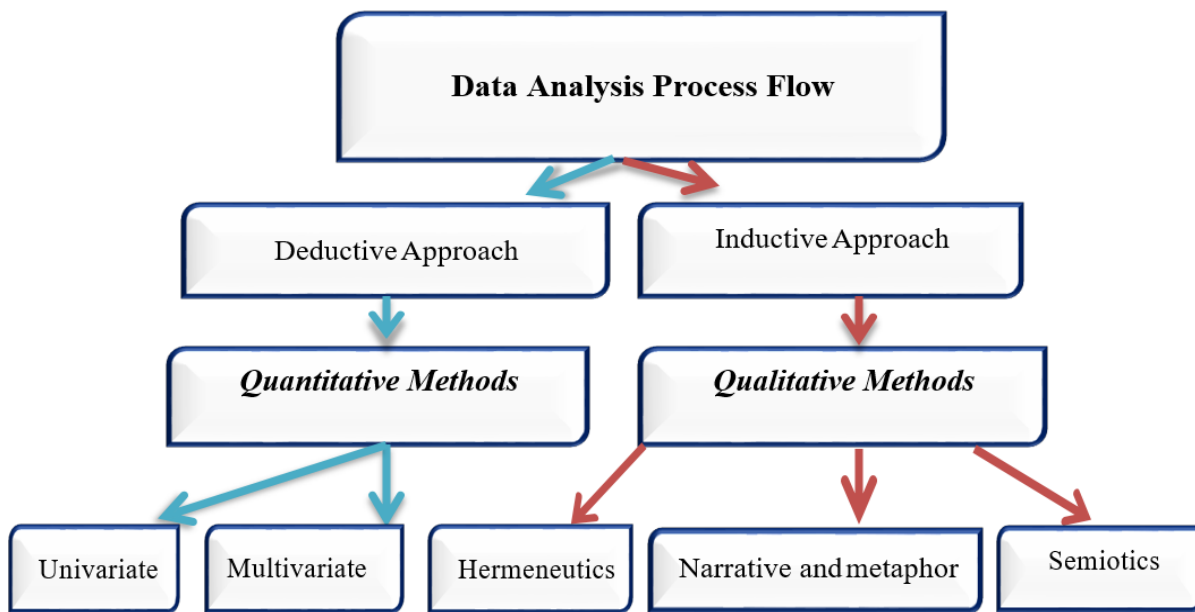
Accordingly, Sekaran (2003:306) makes mention of four distinct but related primary objectives of data analysis, which are:

- Getting a feel and sense of data;
- Sensing the quality of data;
- Testing the study hypothesis and
- Checking the relationship between various variables.

In this study, data collection was followed by data organisation and analysis. The survey questionnaires were analysed using SPSS, e-Views 9.5 and Microsoft Excel. All responses were graphically presented as per the questionnaire sequence. Furthermore, additional qualitative data was analysed where selected public procurement senior officials, specialist and experts were interviewed. To transform the interview transcripts; the qualitative Likert scale ratings for linking the quantitative polynomial data transformation method was used. The process of data analysis was conducted in order to seek respondents' clear views and opinions where applicable (Gray et al., 2007:44).

5.6.5.1 Process flow in analysis of data

According to Figure 5.4 below, the data analysis process flow indicates that it can either have a deductive or an inductive approach; where the deductive approach is mainly used in quantitative research methods and the inductive approach is mainly used in qualitative research methods. Furthermore, quantitative research methods use univariate or multivariate methods of data analysis and qualitative research methods use hermeneutics, semiotic, metaphor and narrative data analysis methods (Sekaran, 2003). The above process flow data analysis was followed later during data analysis procedures; it is with the above data analysis process flow in mind that that researcher opted to use a hybrid research method, which capitalise on strengths of each of these research methods in order to effectively address the complicated studies.

Figure 5.4 Process flow in analysis of data

Source: Adapted from Sekaran (2003)

The data analysis process is an ongoing activity, it does not only help answer the research question, but it also helps with strategies for improved future data collection procedures. Therefore, proper data analysis procedures help to put the research study into perspective and test the study hypothesis (Gray et al., 2007).

5.6.5.2 *Preparing data for analysis*

Data editing is a requirement during the process of data analysis, especially when dealing with open-ended responses from semi-structured interviews and sometimes even from additional comments. Data editing requires that follow-up questions be asked of the respondents to make sure that the correct viewpoint of each respondent is well captured and not missed; furthermore, that all questions have been answered (Sekaran, 2003:302). At times, there will be blank responses from the participants, therefore the handling of blank responses is critically important in data analysis, in cases where more than 25 percent of questions are not answered the questionnaire concerned should be discarded (Sekaran, 2003:302); however, there were no blank responses in this study. In this research, data was coded to make it easy to capture it in a computer then transfer it to SPSS software. Variables were categorised in order to ensure that similar theme responses were put together to draw some preliminary conclusions and study direction.

As a result, Microsoft Excel, e-Views 9.5 and SPSS were used for storage, analysis and creating graphs. Statistical analysis was done on the quantitative findings using appropriate methods such as Cronbach's alpha because this system helps with simplifying the quantitative data into small and easily understandable information, which can be understood even by an ordinary person who is not a researcher. The qualitative research approach provided rich insights into the public sector legislation review and tested existing theories. Qualitative methods entailed collecting data through semi-structured responses, field notes from memory, audio and visual tapes (although some

respondents refused to be taped), transcripts of conversations and examination of existing documentation was used during data collection methods.

In contrast to quantitative analysis, analysing qualitative data led to the extrapolation of common themes that informed thematic analysis. In this study the researcher did more in-depth analysis into individual perspectives and searched for commonality among the respondents' views. The expected outcomes were the issues raised about perceptions, communication and assertiveness towards the review of public sector legislation.

Findings were presented and arranged in graph and table formats for each outcome of whether the public procurement processes and legislation have an inverse impact on accelerating service delivery mechanisms. Descriptive statistical data analysis methods such as median, mode, mean and range were calculated and presented to make findings easily understandable and rich in context. The variance and standard deviation of data from sample population was also calculated for further analysis.

5.7 Study validity and reliability

The below two subsections will discuss the importance of validity and reliability principles ensured in this study, taking into account the manner the above principles have been applied in either quantitative or qualitative research methods.

5.7.1 In using quantitative methods

Dependency and credibility is a measure of data quality in qualitative data studies, whereas validity and reliability measures data quality in quantitative data studies (Graff, 2011:57). The researcher ensured that there were clear results derived from quantitative data methods; and from qualitative data methods, credibility was maintained to ensure high standards of data quality, hence both approaches enhanced the integrity of the findings.

In most cases, reliability is more concerned about whether findings of the study can be repeatable, while validity focuses more on the amount of evidence to trust findings of a specific purpose test in a research study (Cook & Beckman, 2006). For the purposes of this study, various validity measures were used to evaluate the responses and opinions received from public procurement practitioners regarding service delivery and procurement legislation in South Africa.

There were four main validity measures used, the first one was the face validity measure, which tested if the terms used and the content of a questionnaire were understandable and clear to respondents. The researcher ensured that the questionnaire was written in a simple English language with easy terms and explained. Secondly, the content validity measure was used which ensured that there was proper representation and sufficient constructs to draw conclusions. Thirdly, criterion related measure, which tested if respondents were separated according to a pre-specified criterion to predict conclusions. Fourthly, and lastly, construct validity measure, which tested how good the results correlated to the reviewed theories to develop a test; which is a process also expounded by Cavana et al. (2000:212).

5.7.2 In using qualitative methods

In qualitative research methods data must be trustworthy and believable for it to comply with credibility requirements. Credibility also makes sure that the findings of the research study are not far from the current reality in the field under study. However, enforcement of credibility does not mean that all respondents should respond the same way or that they all belong to the same social construct. Generalisation or transferability of research findings is an indication that a researcher can extend the account of a specific population and situation to those who were actually not directly studied (Painter & Rigsby, 2005).

Data collected using qualitative methods is expected to be reliable, to yield the same results under similar situations, and therefore conform to the requirements of dependability. Furthermore, dependability refers to a situation where findings can be replicated using the same respondents in a similar situation, thereby emphasising the importance of changing some circumstances and contexts that are the pillars consistency for research outcomes (Merriam, 1998:205). Findings are also expected to be confirmable, in the sense that other scholars can also confirm or collaborate with the findings of the study, therefore eliminating the element of bias. To ensure that there is confirmability of findings a researcher can subject their results to a peer-review mechanism, where scholars in the same field can review the findings in order to ensure its confirmability; therefore, all sources of data must be archived in an easily retrievable storage system in case findings are challenged (Seale, 1999).

The use of triangulation in ensuring the validity of findings is encouraged; this is a process whereby different research techniques are used concurrently. Triangulation ensures that there is an overlap of information in order to double or triple check results in more than one viewpoint. There is a possibility of triangulation to discover any bias in case there is only one researcher probing the current phenomenon; therefore, multi-data sources are a requirement for triangulation to exist and increase the validity of qualitative research findings (Painter & Rigsby, 2005). In this study, the researcher ensured triangulation by consulting and reviewing all possible and relevant sources of data to make it rich and triangulated.

5.8 Study delimitations and limitations

In any research study one of the key limits is the integrity of respondents; therefore, the researcher ensured the integrity of the respondents through their volunteering to partake in the study without coercion. The respondents were clearly advised that they could stop participating in the study at any time during the research process with no prejudice against them in any way. Because the researcher was not working in the same organisations with respondents there is a possibility that some limits on what was given and revealed to the researcher because of a fear that the researcher was a “stranger”. Time constraints during the year was one of the limiting elements, as the researcher is employed full-time, therefore the time available was less than ideal for an ethnographic study such as this.

As noted by Sekaran (2003) that the delimitations are the processes, which gives perimeters around the scope, and determine restrictions of the study. The researcher assumed that participants would answer honestly, because their confidentiality was guaranteed and preserved, the respondents were clearly advised they were volunteering to partake in the research study, and they could stop participating any time without coercion or inverse ramifications. Another delimitation in this study

was the geographic spread of its respondents. The study was about government procurement legislation and service delivery challenges in South Africa and could not necessarily be applied in other sections of the public sector in general. Furthermore, the criteria of participants selected for the study constitute delimitation, as highly technical and operative employees were excluded.

Changing the methods of data collection and deliberately distorting data can be one measure of bias by the researcher. Accordingly, bias normally refers to an unacknowledged or unknown error during the research planning, choice of research problem to be probed, sampling techniques, data analysis, data collection and the level of ethics of the researcher (Saunders, 2007:267). Therefore, to prevent any bias, the researcher ensured that respondents' names were not revealed during the analysis of data and presentation of findings. The researcher ensured that a high level of objectivism through the entire study process was adhered to.

5.9 Ethical considerations of the study

Ethics can be defined as standards and norms people choose to adhere to, in most cases guided by an ethos of morality in relation to people's behaviour towards others (Cooper & Schindler, 2003:87). Therefore, a similar approach is used in social sciences research processes, where a researcher is expected to have morals and ethics when conducting the entire research study; honest with the respondents about the main aim of conducting the research and the intended purpose of the resulting findings. In this study, permission to access respondents was sought from each delegated authority of each government institution studied, a procedure supported by Saunders et al. (2007:104).

Mainly, the aim of ethics in any study is to make sure that no one suffers or is harmed due to participating in any study. Unethical behaviours such as non-disclosure agreements, not keeping the respondents' confidentiality promise, avoiding legal liability when it arises, misrepresentation of findings and deceiving respondents (Cooper & Schindler, 2003:120). Accordingly, the researcher sought written or express consent from all respondents, way before they completed the research questionnaires and/or participated in semi-structured interviews and respondents' confidentiality was guaranteed. Furthermore, permission was sought from all accounting officers of relevant government institutions to conduct the research study; moreover, no harm was done to any respondent. Therefore, the study has complied with all requirements of Stellenbosch University codes of research ethics as it was approved by the university's Research Ethics Committee (REC).

5.10 Pilot study

In most cases, a pilot studies are regarded as diminutive versions of the main research study, usually conducted on a smaller number of participants or limited in scope. Pilot studies are mainly conducted to iron out any glitches that might arise during the main research study. It is known that no matter how experienced and careful the researcher is, there is always a possibility of study errors and omissions (Van Teijlingen & Hundley, 2001). Therefore, to minimise any omissions and errors, the researcher is expected to conduct a pilot study in order to determine whether the research instruments used such as interview guides and questionnaires are well written and not confusing for respondents (Corman & Lussier, 2001:11).

In a pilot study testing how long it will take to complete an interview or a questionnaire is crucial in order to readjust the questions. Experts are also requested to provide comments on the construction of questions and other research protocols. A pilot study allows for checking of the reliability and validity of results and it may lead to changes in the hypothesis. A pilot study also helps to detect early on whether research protocols are flouted or instruments and proposed methods are too complicated or inappropriate for respondents to comprehend (Saunders et al., 2007:386).

The advantages and reasons given above convinced the researcher to ensure that the designed survey questionnaire and semi-structured interview guide were piloted on 30 public procurement practitioners and procurement experts. The pilot's respondents were drawn from less government institutions; however, it covered the full scope of the investigation, only the number of respondents was limited.

5.11 Summary and deductions

There were various deductions resulted from this chapter's deliberations. The chapter discussed in detail the problem statement background, the problem statement itself, coupled with the study objectives and hypotheses, and the dependent and independent variables. A broader view of research design and methodology, where matters of research philosophy, research strategy and research approach was thoroughly discussed. Furthermore, there was a discussion of the study phases and its expected outcomes. Research design and differences between qualitative and quantitative research designs were thoroughly elaborated. There was also a discussion on the rationale behind using the hybrid research design method, which encompasses features of both qualitative and quantitative research designs.

A broad theme on research processes was discussed, where the focus was on targeted population, sampling techniques and sampling size for the study. The research instruments were also discussed where the advantages and disadvantages of using questionnaires and interview guides as instruments for data collection were thoroughly unpacked. Furthermore, the importance of the document and literature review was discussed, where acts, guidelines and regulations issued by the National Treasury and other government institutions were reviewed as part of the study.

There was a discussion around data collection, administration and gathering instruments; where data analysis process flow chart was revealed and explained. The validity and reliability of the data and its findings was thoroughly discussed for quantitative and qualitative research designs. The limitations and delimitations of the study was discussed, where matters of respondents' integrity were discussed and furthermore. Other matters that limited the full potential of the research study, such as the geographical spread of respondents, were discussed. The concluding elements discussed were ethical considerations and why a pilot study should be conducted.

The following chapter will analyse and present data; the chapter will also interpret and discuss the study findings.

CHAPTER 6

RESULTS FROM EMPIRICAL STUDY: ANALYSIS AND DISCUSSION

6.1 Introduction

In the preceding chapter the overall research designs and methodologies employed in this study were critically discussed and the options chosen were thoroughly discussed. Chapter 5 also discussed the research problem background and clearly stated the research problem and its objectives. The study hypothesis was discussed together with processes relating to data analysis and the pilot study which was undertaken. All of the above processes were done in a quest to set up research platforms to determine whether there are any South African public procurement prescripts and their implementation that delay service delivery.

It is based on the previous chapter's discussions that the current Chapter 6 has been structured to provide a brief introduction and background to the study and to do a demographic analysis or profiling of the study respondents. A scientific analysis of responses from respondents in terms of the statements contained in the questionnaires and interview guides will thereafter follow. Beginning with the questionnaire's demographic section, respondents' responses were analysed in terms of response percentage and the results distribution (which was normally distributed). The process of results distribution was done through survey questionnaires and semi-structured interviews, which then yielded homoscedastic responses. The data conversion process was conducted across the range from demographic data through examination of the specific researched variables applicable to this research study. The results of each question were connected to the theory explored in chapters 2, 3 and 4 of this dissertation. Finally, this chapter will analyse the results in a form of summaries and deductions relating to the study findings.

6.2 Background to data analysis

In order to broadly answer the question asked in Chapter 1, which was the main reason for the research study to be conducted; firstly, it is important to concur with the proposal of many scholars that the ultimate goal of all scientific study operations is to ensure the pursuit for truth (Mouton, 2001:239). Therefore, the main study objective was to probe whether the public procurement prescripts and its implementation have any inverse impact on accelerating service delivery in South Africa.

In order to answer another question, which was, for whom was the study conducted, it is noteworthy that this chapter gives study results through analysing data from the research conducted. Creswell (2009:189) defines data analysis as a procedure of processing data into articulated groups, while gathering patterns of relationships among the data groups analysed. Therefore, in this study, data was obtained from respondents ranging from chief directors in public procurement to public procurement practitioners of nine (9) national, provincial major service delivery institutions (such as Departments of Health, Public Works, Human Settlements, Social Development, Transport) and one high capacity municipality from each of the nine (9) provinces.

The scientific methods used to gather, sort and analyse data are summarised below. Responses were measured using the five-point Likert scale; where respondents were given semi-structured statements to either “strongly agree” (Likert scale value 5), “agree” (value 4), “don’t know” (value 3), “disagree” (value 2) or “strongly disagree” (value 1). Questionnaire responses were analysed using e-Views 9.5 statistical software packages, SPSS, Microsoft Word and Microsoft Excel. As indicated above, responses were presented in a graphical format according to the questionnaire sequence. Furthermore, additional qualitative data was analysed where selected public procurement senior officials, specialists, experts and senior OCPO officials were interviewed. To transform the interview transcripts into meaningful information (deductive approach); the qualitative Likert scale ratings for linking interview transcripts of data into quantitative polynomial data transformation method was used.

6.3 Scientific statistical background

In order to determine the relationship (no relationship or negative or positive) between the studied variables, the Pearson correlation coefficients were calculated. Here linearity assumes a straight-line relationship, meaning that there was upward trending or downward trending among each of the variables that are analysed. The analysis process assumed that data was not far displaced from the median. In scientific research terms, a proportional change in one variable due to a change in one variable is regarded as linear. As for the Pearson (r) coefficient, both variables are evenly distributed, and have bell-shaped curves (Coffman, Maydeu-Olivares & Arnau, 2008).

According to the data distribution tests conducted, all variables were found to be normally distributed and there was homoscedasticity (equal variance) amongst the variables. Furthermore, the Pearson (r) correlation coefficient with a value of ± 0.75 percent indicated that there was a strong positive correlation between the variables which yielded best results (stronger correlations) for this study.

The multivariate regression analysis approach was also used to measure how one type of value in dependent variable changes if one independent variable were to be changed, *ceteris paribus* (Babbie & Mouton, 2010). The above process allowed the researcher to make inferences about the effects of a change in any of the independent variables (found in Chapter 5). Generally, the study achieved a favourable response rate, with 338 respondents who actually partook in this survey study, therefore the response rate for this study was a high of 96 percent.

6.4 Statistical analysis of research data

In order to get the clear context of all respondents’ responses, it was important to conduct a demographical data analysis (as per paragraph 6.4.1 below). The respondents’ demographical data in terms of their gender, age group, qualifications and public sector procurement experiences was analysed in the following sections. The above process was executed with a broad view aimed at assisting the South African government in terms of human resources planning and skills planning, for example, if public procurement practitioners are aging very fast, the government human resource strategy will have to be reviewed. Thereby catering for the gap that might hinder the service delivery because the old public procurement practitioners would have retired without any new pipeline talent

strategy underway. The demographical analysis will assist in understanding the profile of the respondents being dealt with.

Further analysis in terms of the core public sector procurement data was executed, whereby the data collection was organised into two categories of statements (questionnaires) and unstructured statements (interviews) (as per paragraph 6.4.2 below). Q1 stands for question number one (1) until Q53 for question number fifty-three (53), which is the total number of quantitative questions of the study. Unstructured statements were solicited in the form of semi-structured interviews with the selected public procurement specialists, senior OCPO officials (authorities) and experts from all selected government institutions in order to ensure fair representation of gender and geographical location of the interviewees. The fair representation exercise was crucial because each province and region in South Africa possesses slightly different procurement challenges for public procurement practitioners.

The National Treasury, as a custodian and authority for all public procurement processes and prescripts, was thoroughly consulted. The researcher opted to conduct semi-structured interviews on a face-to-face basis with senior officials in the OCPO to ascertain some facts or opinions raised by respondents. Several dynamics were revealed that could not have been received from the ordinary public procurement practitioners; which is the reason why National Treasury through the OCPO was consulted because it develops public procurement policies and ensures its compliance. The information from the interviews and the viewpoints of the senior officials were analysed and incorporated into the below findings. Therefore, the broad view of the data analysis section was structured as follows:

- a) Demographic data analysis
- b) Public sector procurement practices data analysis (structured and open-ended statements)
 - 1. Data analysed from quantitative respondents (questionnaires)
 - 2. Data analysed from qualitative respondents (interviews)
 - 3. Data analysed from qualitative respondents (*authorities'* interviews)

6.4.1 Demographic data analysis

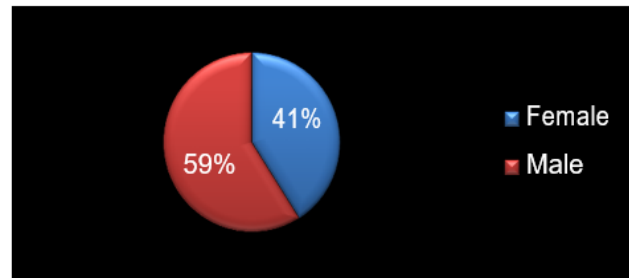
Demographical data analysis will be discussed in the below subsection. The respondents' demographic data in terms of their gender, age group, qualifications, and public sector procurement experiences was analysed as per the following graphs.

6.4.1.1 Gender analysis

Table 6.1

Gender	Count	Percentage
Female	138	41%
Male	200	59%
Grand Total	338	100%

Figure 6.1



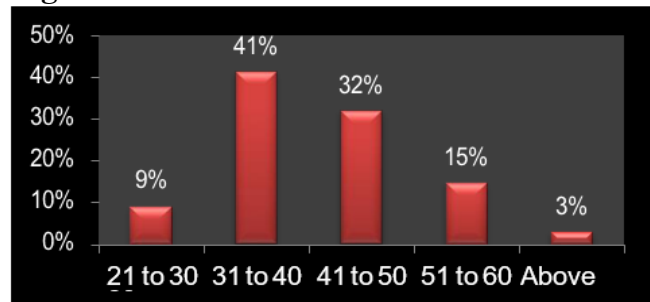
According to Table 6.1, it is clearly indicated that male public procurement practitioners were dominant in the survey with 59 percent of respondents being male whereas, women were only around 41 percent. Therefore, based on the findings it is clear that government has fallen short in addressing employment equity in terms of employing more women in the workplace, especially in procurement units in order to balance the gender disparities and comply with Employment Equity Act No. 55 of 1998. Generally, the study presented a male-to-female percentage ratio of around 60:40, which is illustrated in the above pie graph Figure 6.1.

6.4.1.2 Age analysis

Table 6.2

Count of Age Group	Count	Percentage
21 to 30	31	9%
31 to 40	139	41%
41 to 50	108	32%
51 to 60	50	15%
Above 60	10	3%
Grand Total	338	100%

Figure 6.2



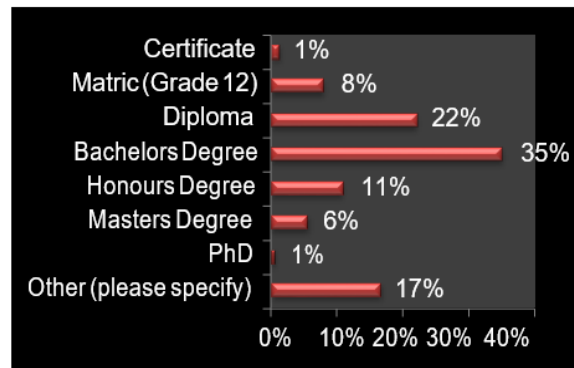
In Figure 6.2 above, the average age of respondents indicated that respondents are relatively young to middle-aged adults with a dominant age group of 31 to 40 years who participated in the research study. As a result, it is clear that the public sector procurement workforce is not aging fast as yet, which is a positive element in public sector procurement workforce. This is also good for preserving and keeping institutional memory and knowledge that is highly needed in public sector; especially in the procurement units.

6.4.1.3 Qualifications analysis

Table 6.3

Highest qualification	Count	Percentage
Other (please specify)	56	17%
PhD	2	1%
Master's Degree	19	6%
Honor's Degree	37	11%
Bachelor's Degree	118	35%
Diploma	75	22%
Matric (Grade 12)	27	8%
Certificate	4	1%
Grand Total	338	100%

Figure 6.3



In terms of Figure 6.3 above, the majority of respondents, at 35 percent, hold bachelor's degrees and 22 percent have diplomas as their first tertiary qualifications, and in total 75 percent of respondents possess tertiary qualifications. Therefore, this indicates that the respondents had the capacity and capability to comprehend and contribute meaningfully to the survey, given their level of education. Furthermore, the above process provides numerous benefits to the public sector, Hardiman (2011) alluded that "individuals who pursue post-secondary education are perceived to be more ambitious, motivated, self-confident and teachable, than their non-degree associates" Nadiadwala (2011:2) supported the above notion and stated that "academic qualifications are important because, in order to gain good exam grades or a degree, students have to work hard, master demanding skills and learn a great deal of specialist knowledge". Although this is not a requirement in public procurement, the researcher's view is that, if the process is followed to the latter it can help improve the skills base of public procurement practitioners, and thereby accelerate service delivery.

6.4.1.4 Public sector procurement experience analysis

Table 6.4

Indicate how many years you worked for Government in SCM section	Count	Percentage
Over 10 years	138	41%
6 to 10 years	119	35%
Between 3 to 5 years	65	19%
Between 1 to 2 years	11	3%
Less 1 year	5	1%
Grand Total	338	100%

Figure 6.4

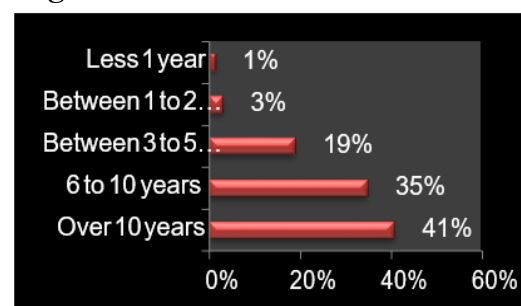


Figure 6.4 displays a collective 41 percent of respondents employed by public sector in procurement for over 10 years. A further 35 percent have been with the public sector in procurement between 6 to 10 years. A further 19 percent have been with public sector procurement between 3 to 5 years. The high percentage of employees not leaving the public sector procurement sections indicated that there is a low employee turnover which a positive element for the public procurement profession. Public sector procurement is a highly specialised field, consequently the vacancies can be filled using internal public sector recruits.

Government should have succession planning included in the human resources strategy to avoid losing the cadre of public sector procurement professionals.

6.4.2 Public sector procurement probe analysis

The fifty-three (53) questions below present results and analysis in terms of core public sector procurement data, whereby data collection was organised into two categories of structured statements (questionnaires) and unstructured statements (interviews) as analysed together below:

Q 1: Public sector procurement legislation in South Africa is highly fragmented

Table 6.5

Value	Count	Percent	Cumulative Count	Cumulative Percent
1	10	2.96	10	2.96
2	53	15.68	63	18.64
3	6	1.78	69	20.41
4	185	54.73	254	75.15
5	84	24.85	338	100.00
Total	338	100.00	338	100.00

Mean	4	Median	4	Mode	4
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Figure 6.5

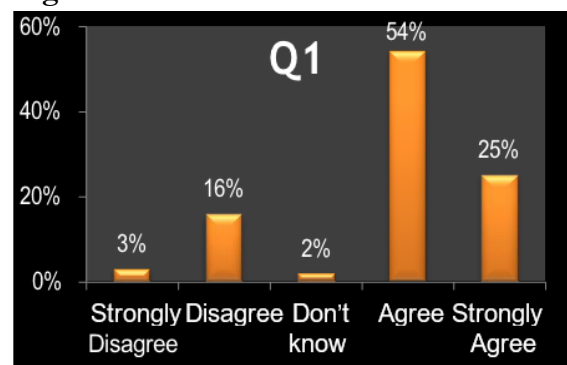


Figure 6.5 shows 54 percent of respondents agreeing that there is fragmentation of public sector procurement legislation in South Africa. The same sentiments were shared by 25 percent of respondents who strongly agreed with the statement. Therefore, according to the researcher's analysis, it is evident that consolidation of the legislation governing public procurement is for the betterment of interpretation and implementation. The legislation consolidation process might lead to accelerated service delivery, which is generally an ultimate goal of any government. In concurring with the statement, qualitative data respondents indicated that "sometimes legislative fragmentation is due to the fact that National Treasury keeps on issuing more instruction notes. In most cases, instruction notes cause further confusion and some instruction notes get withdrawn within a month of being issued." One respondent added that "this challenge is due to the perception that National Treasury does not consult with operational public procurement practitioners in national, provincial departments, public entities and municipalities."

According to the researcher's analysis, there were various concerns raised by qualitative data respondents regarding the fragmentation and misalignment of legislation governing public procurement. One respondent gave an example that there is a significant duplication and overlap between various procurement processes leading to uncertainty as to which prescript to follow. A well-known example is complaint mechanisms available to aggrieved bidders at the municipal level under the Municipal Systems Act of 2000, section 62 (allows for internal appeals within 21 days). However, regulation 49 of Municipal SCM Regulations promulgated in terms of the MFMA (complaints to be lodged within 14 days). Therefore, such contradictions in approaching similar matters are concerning and cause confusion. Another

example is setting thresholds for national and provincial procurement methods which are set out in National Treasury instructions, yet at municipal level procurement thresholds are set out in regulations, but legally instruction notes and regulations do not carry the same weight.

A small margin of respondents disagreed (16 percent) and strongly disagreed (3 percent) with the above statement, where qualitative data respondents indicated that some prescripts are not communicated effectively to public procurement practitioners in order to be understood properly. One respondent said, “there are too many pieces of legislation, estimated over 80, that govern public procurement.” Some qualitative data respondents indicated that most prescripts are equivocal in implementation and are mostly open for own opinion and interpretation; hence, recently there have been a considerable number of litigations against government institutions (in most cases government loses).

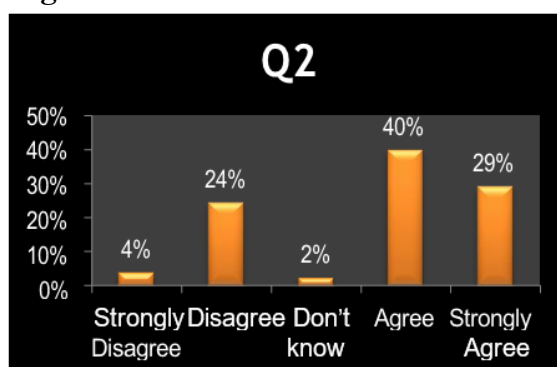
It was accordingly important for the researcher to get the authorities’ views on some highly contested opinions by the respondents. Some senior officials from the OCPO (representing authorities) who were interviewed indicated that “the public procurement legislative landscape in South Africa is highly fragmented and that is due to different, divided and subdivided legislation into specialised fields without a common overarching legal framework”. The officials also gave the example of CIDB, NHBRC, and Correctional Services Act (which requires government institutions to procure school furniture from products produced by inmates); while PFMA does not allow for this procurement method as it calls for perfect competition in public procurement. According to the researcher’s analysis, such conditions add to the complexity that already exists in public procurement. Therefore, public procurement practitioners are expected to scan all prescripts that might be involved in government procurement before they procure, which is a rather daunting and difficult task as the legislation is scattered.

Q 2: Public sector procurement legislation fragmentation delays service delivery

Table 6.6

Cumulative Cumulative					
Value	Count	Percent	Count	Percent	
1	13	3.85	13	3.38	
2	83	24.56	96	28.40	
3	8	2.37	104	30.77	
4	136	40.24	240	71.01	
5	98	28.99	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	4

Figure 6.6



Drawing selected deductions from Q1 above, Figure 6.6 of Q2 shows 29 percent of respondents strongly agreed and 40 percent agreed that fragmented public sector procurement legislation delays service delivery, which amounted to a combined 69 percent of respondents agreeing with the statement. According to the researcher’s analysis, among other reasons that delays service delivery is the fragmentation of public sector procurement legislation. Furthermore, the researcher’s analysis is that the findings pose a considerable

challenge to the National Treasury as the custodian of public procurement legislation. Specially to ensure that there is radical consolidation of legislation governing public procurement in South Africa.

However, 24 percent of respondents disagreed with the statement citing reasons such as; the main cause of service delivery delays is around the skills-set of bid committees members and their coordination. Respondents furthermore indicated that there is a lack of proper procurement planning and strategies to address procurement needs based on the product market research.

Qualitative data interpreted from senior OCPO officials indicated that public procurement legislation fragmentation delays service delivery because there is a lack of central legislative accountability to monitor procurement performance in order to accelerate service delivery. One official commented that “public procurement performance management should be regulated through legal frameworks with appropriate flexible review and remedy mechanisms to avoid delays in service delivery”. Senior officials from the OCPO also indicated that the current legislative fragmentation contributes to best practices not being shared across legislative boundaries of all government institutions.

Furthermore, of those officials interviewed some agreed with the perception that service delivery delays are due to fragmented legislation because there are no best procurement procedures and processes developed and shared across government entities. In another open-ended interview, senior OCPO officials further indicated that public procurement practitioners get confused about which legislative requirements are applicable, especially when different procurement entities require different policy measures. For example, the application of certain procurement processes would be different in the health commodity sector as compared to the defence or the electricity utility commodity sector.

Officials were then asked their opinion on the new upcoming procurement bill. The first official indicated that the new regulatory framework for public procurement in the form of a procurement bill would try to cater for differentiated regulatory policy approach. Therefore, it is anticipated that the new procurement bill will broadly fit into an overarching integrated public procurement legislative framework. “Public procurement differentiation is urgently needed”, added one senior OCPO official. Citing reasons such as construction related procurements should be dealt with under special conditions, as should ICT procurements, the one-size-fits-all procurement procedures did not work; therefore, there is an urgent need for differentiated public procurement.

However, there was a dissenting opinion among the senior OCPO officials, where one official commented that service delivery delays are not only caused by fragmented legislation, but are mainly caused by poor procurement planning (which is basically technical). It was noted from the OCPO official interview that another reason that is mainly contributing to service delivery delays, is that different decisions are taken in different places and levels (bureaucracy in government structures). According to the researcher’s analysis, there is evidence of a lack of collaboration among government institutions involved in public procurement. For example, decisions on a bidder’s tax status are determined from SARS and BBBEE status is

commissioned in the DTI, taking into account the importance of the above two procurement documents, it should be coordinated in one central point, as the CSD is proposing to achieve.

Q 3: Recent public sector procurement reforms published by OCPO will improve public sector procurement

Table 6.7

Cumulative Cumulative						
Value	Count		Percent	Count		Percent
1	8		2.37	8		2.37
2	46		13.61	54		15.98
3	60		17.75	114		33.73
4	147		43.49	261		77.22
5	77		22.78	338		100.00
Total	338		100.00	338		100.00
Mean	4	Median	4	Mode	4	

Figure 6.7

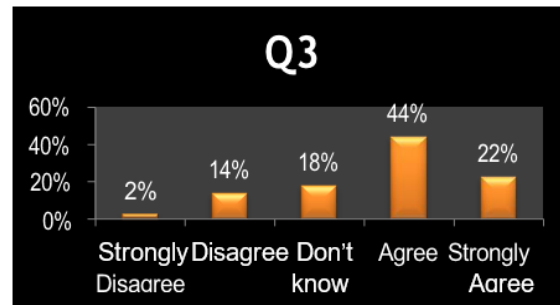


Figure 6.7 above showed a combined 66 percent of participants agreed (44 percent) and strongly agreed (22 percent) that the OCPO reforms would improve public procurement. According to researcher's analysis, the above results indicated that reforms might have a positive impact on public procurement operations. However, a worrying 18 percent indicated that they do not know, which indicated that the OCPO would need to effectively consult and communicate more with employees in public procurement about the kind of procurement reforms to be issued.

Notwithstanding the 14 and 2 percent who disagreed and strongly disagreed respectively with the statement, in support of the disagreement with the statement, qualitative data respondents stated that "OCPO publishes too many compliance documents without public participation that sometimes get withdrawn within a month; the documents add more burden and confusion to public officials who are expected to implement them".

Q 4: BBBEEA compliance delays service delivery

Table 6.8

Cumulative Cumulative					
Value	Count	Percent	Count	Percent	
1	47	13.91	47	13.91	
2	165	48.82	212	62.72	
3	15	4.44	227	67.16	
4	74	21.89	301	89.05	
5	37	10.95	338	100.00	
Total	338	100.00	338	100.00	
Mean	3	Median	2	Mode	2

Figure 6.8

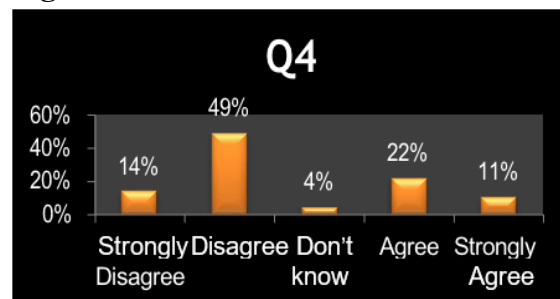


Figure 6.8 shows that respondents amounting to 49 percent disagreed and 14 percent respondents strongly disagreed that the BBBEEA compliance delays service delivery. Some extracts from qualitative data indicated that "the BBBEEA could not delay service delivery because it is in the last stage of evaluation, instead it promotes the Small Medium Micro Enterprises (SMMEs) scores to be high". However, 22 percent and 11 percent agreed and

strongly agreed respectively that the BBBEEA does cause some delays in service delivery. Respondents on qualitative data had views such as, “BBBEE compliant companies in most cases do not complete projects allocated to them on time and sometimes they deliver shoddy or poor workmanship in order to maximise profits and their financial management skills are a seriously distraught.”

Q 5: Undue political pressures lead to non-compliance to public sector procurement legislations

Table 6.9

Value	Count	Percent	Cumulative	
			Count	Percent
1	5	1.48	5	1.48
2	35	10.36	40	11.83
3	15	4.44	55	16.27
4	114	33.73	169	50.00
5	169	50.00	338	100.00
Total	338	100.00	338	100.00

Mean	4	Median	5	Mode	5
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Figure 6.9

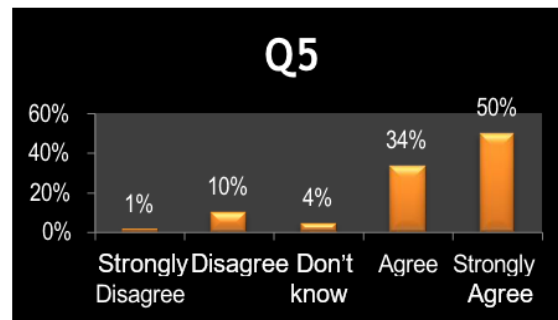


Figure 6.9 indicates that 50 percent of the respondents strongly agreed that there are instances of political interference in public procurement. In most cases this causes officials to transgress public procurement prescripts, the same sentiments were shared by 34 percent of respondents who agreed with the statement. According to the researcher's analysis, findings indicated that respondents are conscious of the political interferences. However, due to the seniority of the political principals, officials are sometimes pressured not to comply with prescripts, as they fear losing their jobs. Qualitative data respondents gave an example that “in most cases, especially in municipalities, local councillors exert undue pressures on public procurement practitioners to channel tenders in favour of their preferred bidders”. Nevertheless, a small margin of 10 percent disagreed that there are instances of political interference in public procurement operations.

One of the OCPO senior officials in a one-on-one interview indicated that undue political pressures could lead to non-compliance with public procurement legislation; this is due to the confused and fragmented prescripts. Therefore, public procurement best practices cannot be cross-functionally transferred from one government sphere to another (municipalities versus provincial or national departments). The above challenge makes the synthesis of different procurement practices difficult to be combined into one integrated procurement profession, where the practice experience between different procurement fields can be shared. As a result, it becomes uncomplimentary in terms of professional development; respondents gave a typical example of strategic sourcing and traditional procurement; where state-owned entities (SOEs) fully apply strategic sourcing principles, yet other spheres of government do not apply them.

Qualitative data from OCPO senior officials further indicated that public procurement practitioners do not know which prescript is applicable as there are some conflicting prescripts. An example was given such where BBBEE codes indicated R10 million whereas

PPPFA regulations stated R5 million to identify Exempted Micro Enterprises (EME), therefore it was unclear which prescript to use. Another example given by OCPO officials was Correctional Services Act versus PFMA Treasury regulations. Public procurement practitioners are sometimes scared of being arrested; so they take a long time to make service delivery decisions because they must do research and seek legal advice before they sign off any service delivery procurement decisions.

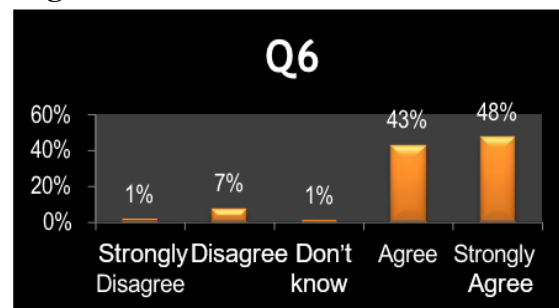
However, a dissenting view was notable again amongst OCPO officials, where one official indicated that sometimes non-compliance to public procurement legislation is due to deliberate manipulation of public procurement prescripts, “sometimes officials know what to do during procurement processes, however deliberately decide to manipulate prescripts to suit their ulterior motives”. Therefore, OCPO officials indicated that law enforcement and consequence management is needed to set some examples with harsh punishment for transgressors.

Q 6: Non-training of public sector procurement practitioners leads to non-compliance with public sector procurement legislation

Table 6.10

Value	Count	Cumulative		Count	Percent
		Percent	Count		
1	4	1.18	4	1.18	
2	25	7.40	29	8.58	
3	3	0.89	32	9.47	
4	144	42.60	176	52.07	
5	162	47.93	338	100.00	
Total	338	100.00	338	100.00	
Mean	2	Median	3	Mode	3

Figure 6.10



The results depicted in Figure 6.10 indicate that 48 percent of participants strongly agreed with the notion saying there is a relationship between non-compliance and training to public procurement prescripts, with 43 percent also agreeing with the statement. According to the researcher's analysis, findings indicate that employees are aware of the need for training in public procurement prescripts in order to have sufficient skills to procure and deliver much-needed public goods and services. Only 7 percent indicated that there is no relationship between non-compliance and training to public sector procurement legislation.

Q 7: Public sector procurement legislation is rigid and difficult to implement

Table 6.11

		Cumulative		Cumulative	
Value	Count	Percent	Count	Percent	
1	23	6.80	23	6.80	
2	171	50.59	194	57.40	
3	12	3.55	206	60.95	
4	87	25.74	293	86.69	
5	45	13.31	338	100.00	
Total	338	100.00	338	100.00	
Mean	3	Median	2	Mode	2

Figure 6.11

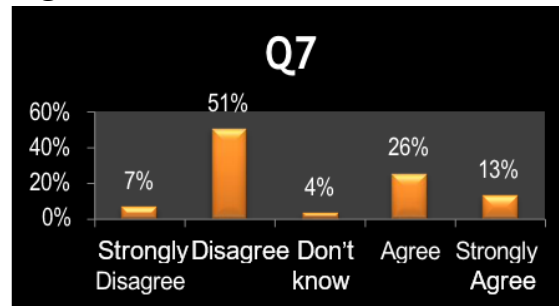


Figure 6.11 illustrates that a combination of 58 percent of respondents strongly disagreed (7 percent) and disagreed (51 percent) that public sector procurement legislation is rigid and difficult to implement. Qualitative data respondents said that it is the lack of training on prescripts; which concurs with the sentiments shared in Q6 above, with some prescripts unclear because the National Treasury constantly issues a variety of procurement instructions and prescripts.

However, 26 percent agreed that public sector procurement legislation is rigid and difficult to implement. According to the researcher's analysis, officials sometimes know what is expected of them with regard to procurement prescripts; however, there are other external elements such as political pressures that force them not to comply. Furthermore, 13 percent of respondents held a strong view that public procurement prescripts are inflexible and hard to implement, which might indicate that there is inadequate training on public procurement prescripts.

There was an indication from one OCPO senior official interviewed that "much outcry has been received from the public that government institutions are tasked with the mandate to create local conducive conditions for job creation". Public procurement legislation is sometimes too rigid and complex to achieve the correct local conditions for job creation as government institutions are not allowed to apply set-aside procurement opportunities for a specific geographical location of bidders. "Within the current preferential procurement framework, public procurement practitioners cannot facilitate local economic development due to the 80/20 and 90/10 preference point system restrictions" one senior OCPO official added. The current procurement bill should be at a high level, to avoid changes at a later stage; it must not include specific figures such as 80/20 or 90/10 or any thresholds; however, those must be captured in regulations and policies, which can be easily amended, unlike the Act.

Furthermore, OCPO senior officials stated that there is a widespread public perception that the 20 and 10 points allocated for BBBEE preferences are too little to achieve socio-economic objectives of government in redressing the imbalances of the past. In addition, historically privileged businesses still obtain government contracts based on the 80 and 90 points for price only, as these companies have the required operational infrastructure and financial strength to compete on lowering bid prices. Accordingly, lower bid prices help

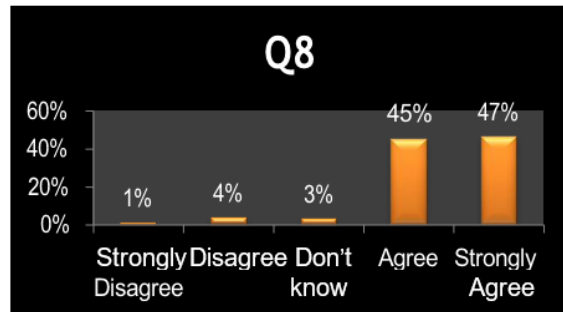
government to achieve the much needed cost savings in government expenditure in the current volatile economic circumstances of a “junk” country credit status. As such, there is less money to spend, therefore lower bid prices will be preferred through the procurement system, while not compromising quality.

Q 8: Segregation of duties improves compliance to public sector procurement legislation

Table 6.12

			Cumulative	Cumulative	
Value	Count	Percent	Count	Percent	
1	4	1.18	4	1.18	
2	12	3.55	16	4.73	
3	11	3.25	27	7.99	
4	152	44.97	179	52.96	
5	159	47.04	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	5

Figure 6.12



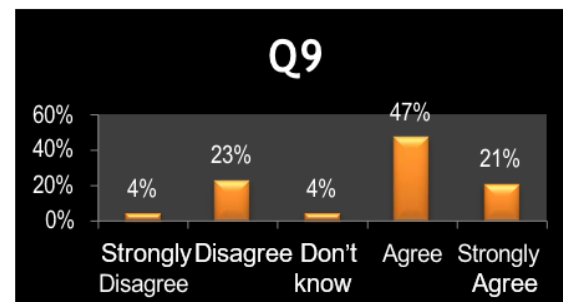
As illustrated in the results shown in Figure 6.12, 47 percent of research participants strongly agreed that the separately allocating duties amongst public procurement officials would ensure effectiveness and efficiency in public procurement. Ultimately, improves compliance to public procurement prescripts, sentiments shared by 45 percent of respondents. According to the researcher's analysis, officials therefore meticulously comprehend the need for separately allocating duties as an attempt to improve compliance, reduce fraud and increase efficiency in public procurement. However, based on qualitative data respondents, some respondents shared a view that “the challenge is that many public institutions may not have prioritised the filling of vacancies in procurement sections, which then makes it difficult to implement an effective segregation of duties in public procurement.” Furthermore, qualitative data respondents shared views such as, “public procurement practitioners always find a way to circumvent the system and still commit fraud and corruption, and it feeds back to the issue of morals and ethics”.

Q 9: Public sector procurement legislation practice notes, circulars, guidelines issued by OCPO are adequate to ensure compliance

Table 6.13

			Cumulative	Cumulative	
Value	Count	Percent	Count	Percent	
1	14	4.14	14	4.14	
2	78	23.08	92	27.22	
3	14	4.14	106	31.36	
4	161	47.63	267	78.99	
5	71	21.01	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	4

Figure 6.13



According to Figure 6.13, 68 percent of participants agreed (47 percent) and strongly agreed (21 percent) that the practice notes, circulars, guidelines issued by the OCPO are adequate to ensure compliance. According to the researcher's analysis, findings indicated that practice notes, circulars, guidelines positively influenced respondents' execution and compliance to public procurement prescripts. However, a small 4 percent of respondents indicated that they "do not know" which indicated that the OCPO has to intensify communicating more effectively to public procurement practitioners about the kind of practice notes, circulars, guidelines issued.

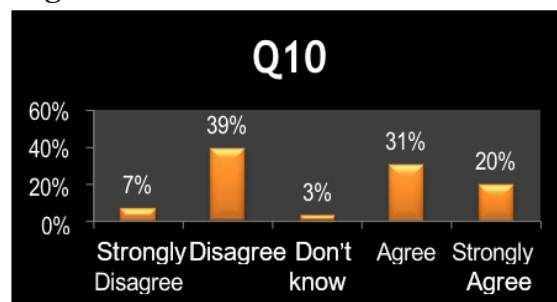
Notwithstanding 23 percent and 2 percent who disagreed and strongly disagreed respectively with the statement, a different point of view was shared by qualitative data respondents that "the OCPO issues too many circulars, practice notes, guidelines to the extent that practitioners cannot keep up". Qualitative data respondents further indicated that there are still practice notes that contradict themselves. Another view shared by respondents was that "OCPO is supposed to create a database where all public procurement officials would be easily guided on issued practice notes". Qualitative data respondents further indicated that sometimes circulars, practice notes are scattered and they are not categorised according to their specific subjects based on the procurement reforms concerned.

Q 10: Public Sector vigorous procurement processes delays service delivery

Table 6.14

			Cumulative	Cumulative	
Value	Count	Percent	Count	Percent	
1	23	6.80	23	6.80	
2	133	39.35	156	46.15	
3	10	2.96	166	49.11	
4	105	31.07	271	80.18	
5	67	19.82	338	100.00	
Total	338	100.00	338	100.00	
Mean	3	Median	4	Mode	2

Figure 6.14



The results in Figure 6.14 show that a combined 51 percent of the respondents agreed (31 percent) and strongly agreed (20 percent) that vigorous public sector procurement processes delay service delivery. However, a combined 46 percent of the respondents strongly disagreed (7 percent) and disagreed (39 percent) with the statement. According to qualitative data respondents, poor planning and poor execution are the cause not the actual public procurement processes.

The interviewed OCPO senior official indicated that "the current procurement processes legislated through the National Treasury SCM policy framework are very basic and caters mostly for general goods and services". Officials further shared views that "the requirement has always been that when interpreting public procurement as a government strategic function, there should be an integration of different procurement commodity sectors." As stated by one official that the above proposed process would also make it easier for procurement processes to be automated and be electronic (CSD as a basic yet an important

start). Therefore, making it easier for public procurement transparency, accountability and further making it easier for bidders to bid for government contracts without the unnecessary burden of manual paper bid submissions.

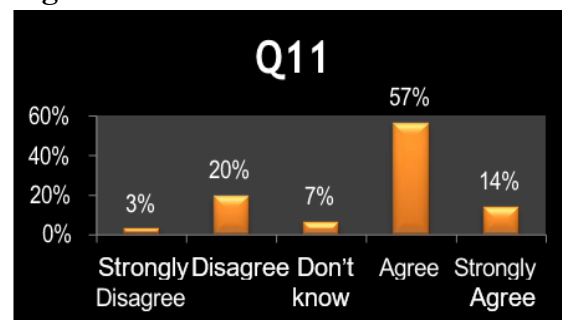
Another official indicated that there is an urgent need for standardised dispute mechanism, which can reduce the turnaround time to resolve disputed procurement cases, and reduce the cost of litigation for both service providers and government institutions in order to accelerate service delivery. The official furthermore stated that procurement planning is critically important and must be reviewed as it sometimes derails all the efforts and controls done during the actual procurement processes. “Sometimes poor planning causes most of the problems in public procurement, such as creating conducive environment for fraud and corruption during the emergency and urgent procurements”, one official concluded.

Q 11: Public sector procurement processes are clearly defined by OCPO for implementation

Table 6.15

			Cumulative	Cumulative	
Value	Count	Percent	Count	Percent	
1	10	2.96	10	2.96	
2	67	19.82	77	22.78	
3	22	6.51	99	29.29	
4	192	56.80	291	86.09	
5	47	13.91	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	4

Figure 6.15



As it was agreed upon by 57 percent of the respondents (Figure 6.15), that the OCPO clearly defines the public sector procurement processes for implementation; which was also concurred by 14 percent of respondents who strongly agreed with the statement. However, 20 percent of respondents disagreed that the OCPO clearly defines the public sector procurement processes for implementation. According to the researcher's analysis, this might mean that the OCPO needs to increase effective methods of drafting procurement processes with public procurement practitioners' participation and further effectively communicate the processes to public procurement practitioners, as it appears from the responses that there is a gap with some public procurement practitioners disagreeing with the statement.

According to one OCPO official who indicated that it is an intention of the new public procurement bill to achieve the new modernised integrated procurement system to streamline public procurement processes. By reviewing the entire legal framework for public procurement and its related procurement processes, there will be a development of new best practices model for public procurement across the country.

Q 12: Politicians use public sector procurement to give tenders to their elites**Table 6.16**

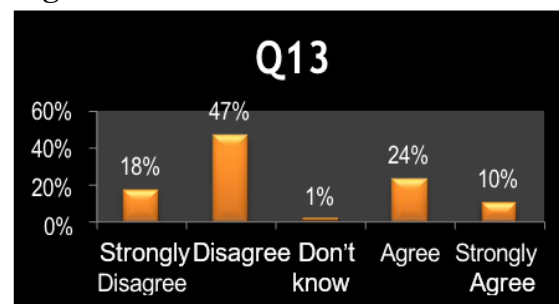
			Cumulative	Cumulative	
Value	Count	Percent	Count	Percent	
1	26	7.69	26	7.69	
2	18	5.33	44	13.02	
3	75	22.19	119	35.21	
4	116	34.32	235	69.53	
5	103	30.47	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	4

Figure 6.16

According to Figure 6.16, a combined total of 64 percent of respondents agreed (34 percent) and strongly agreed (30 percent) that politicians use public sector procurement to give tenders to their friends and elites. Findings indicate that respondents are therefore aware of the unethical behaviour and political interference in public procurement however, due to supremacy of political bearers, some officials are sometimes compelled not to comply with prescripts and award tenders to the preference of their political superiors because of fearing the loss of their jobs. However, a margin of 22 percent respondents don't know if politicians use public sector procurement to give tenders to their friends; according to researcher's analysis, this might mean that they have not been exposed to these occurrences or they are afraid of expressing these types of sentiments about the political principals.

Q 13: The three-bid committee system delays the service delivery**Table 6.17**

			Cumulative	Cumulative	
Value	Count	Percent	Count	Percent	
1	59	17.46	59	17.46	
2	159	47.04	218	64.50	
3	5	1.48	223	65.98	
4	79	23.37	302	89.35	
5	36	10.65	338	100.00	
Total	338	100.00	338	100.00	
Mean	3	Median	2	Mode	2

Figure 6.17

Results depicted by Figure 6.17 illustrate that 47 percent of respondents disagreed that the three bid committee system delays service delivery; the same sentiments were shared by 18 percent who strongly disagreed with the statement. According to qualitative data, respondents cite reasons such as, "the three bid committee system creates transparency and internal control in the procurement system". Goes further to say there is no conflict that exists between service delivery and bid committee system, it is therefore about the compliance with legislation, openness and transparency, which complement service delivery.

However, there was a combined total of 34 percent of respondents who agreed (24 percent) and those who strongly agreed (10 percent) with the statement. In qualifying their concurrence with the statement, respondents think that most delays occur because of poor scheduling of meetings and making a quorum for the meeting to take place because the officials who are appointed to be in the bid committees more often do not quorate. Qualitative respondents further indicated that bid committee members usually state that they are busy or they only get interested to sit in a meeting only if that project relates to their business units. Furthermore, qualitative respondents registered their concerns such as that, many times, members of the committees are not properly skilled to do their functions, and individual senior experts influence the outcomes of the committees' decisions.

As per an OCPO senior official, there has been no link between bid committee processes and service delivery delays (a notion partly agreed by quantitative data respondents on Figure 6.17 above). However, public procurement would need to be elevated up as a strategic function and be treated as a core part of strategic management processes in government institutions, possibly through a legislated positioning of a Chief Procurement Officer to report directly to the accounting officer, with the required experience and professionalism criteria for appointment.

Another OCPO official had a differing view that procurement processes are currently structured in a compliance approach; therefore, service delivery will definitely be hampered. The official further stated that, in the meantime, there should be a strong balancing act between service delivery and compliance to public procurement legislation. A further dissenting view was noticed when one official indicated that, although there is always room for improvement, the current public procurement processes are structured appropriately. However, poor planning contributes to the deaccelerated service delivery, to strengthen this process, pre and post-procurement due diligence need to be reinforced.

Q 14: There is no relationship between service delivery, procurement planning and budgeting

Table 6.18

Value	Count	Cumulative		Count	Percent
		Percent	Count		
1	124	36.69	124	36.69	
2	90	26.63	214	63.31	
3	11	3.25	225	66.57	
4	59	17.46	284	84.02	
5	54	15.98	338	100.00	
Total	338	100.00	338	100.00	
Mean	2	Median	2	Mode	1

Figure 6.18



As per results in Figure 6.18 indicates that 37 percent of respondents strongly disagreed with the statement which said, there is no relationship between procurement planning, budgeting and service delivery; which are the sentiments shared by 27 percent of respondents who disagreed with the statement. Some of the reasons from qualitative data indicated that the budget must be informed by a procurement plan therefore proper planning must make

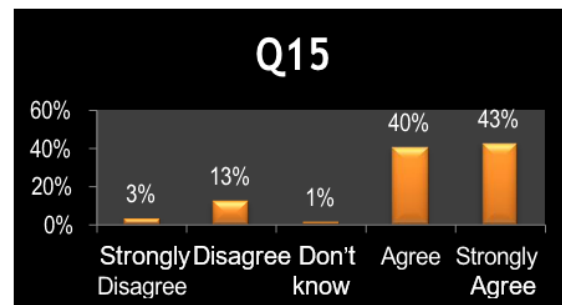
provision that the procurement takes time to be concluded, in order to set realistic expectations from end-users. Combined a total of 34 percent respondents agreed (18 percent) and strongly agreed (16 percent) that there is gap especially between budgeting, procurement planning and service delivery. Qualitative respondents further indicated that this is merely because the focus of public sector officials is more on budgeting and how the service will be delivered yet the procurement of that service need to be planned for in order to meet the targeted time of delivery.

Q 15: Training on ethics and moral values can decrease public procurement fraud

Table 6.19

			Cumulative	Cumulative	
Value	Count	Percent	Count	Percent	
1	10	2.96	10	2.96	
2	42	12.43	52	15.38	
3	5	1.48	57	16.86	
4	137	40.53	194	57.40	
5	144	42.60	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	5

Figure 6.19



As per the results shown in Figure 6.19, when combined, 83 percent of participants strongly agreed (43 percent) and agreed (40 percent) that training on ethics and moral values can decrease public procurement fraud. However, 13 percent and 3 percent of respondents disagreed and strongly disagreed respectively with the statement citing reasons such as, “officials can be trained on ethics and moral values but they will still choose to be corrupt indicating that in some cases officials do corruption knowingly and deliberately”.

A senior OCPO official interviewed indicated that training on ethics could help reduce fraud and corruption. Furthermore, the official indicated that training on fraud and corruption would also assist public procurement practitioners to identify different risk factors involved in hindering government to achieve value for money on its expenditure in service delivery. However, in most cases moral values are seen as belonging and referring to a personal and “spiritual” disposition of the individual, as a result, moral values are left to religious organisations such as churches, families and personal development of individuals to uphold. The OCPO senior official’s personal view was that moral values should be included in public procurement practitioner training.

However, a differing view was sought from another official who indicated that, if fraud and corruption were committed willingly, training would not help. There was also a notion that if fraud is done by mistake or lack of skills or knowledge then training can help reduce fraud and corruption. According to researcher’s analysis of the above statements, the main challenge is to fix and change public procurement practitioner’s mind-set, furthermore, it is required to training officials on the impact of fraud and corruption in delaying service delivery, emphasising more on “robbing” the poor of the poorest. Another OCPO official suggested that incentivised performance through motivation, having good moral exemplary leaders and inspirations could help motivate practitioners and curb fraud and corruption; however ultimately, it goes back to an individual practitioner willingness to commit fraud and corruption.

Q 16: Political interference in public procurement increases fraud**Table 6.20**

Value	Count	Cumulative		Count	Percent
		Percent	Count		
1	2	0.59	2	0.59	
2	8	2.37	10	2.96	
3	27	7.99	37	10.95	
4	107	31.66	144	42.60	
5	194	57.40	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	5	Mode	5

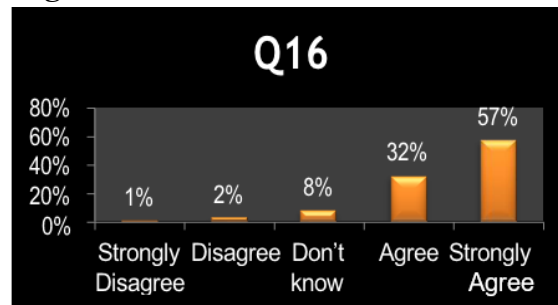
Figure 6.20

Figure 6.20 indicates that 57 percent of respondents agreed that there are instances of political interfering in public procurement. In most cases this causes an increase in fraud, which was also supported by 32 percent, then amounted to a total of 89 percent of respondents concurring with the statement. However, a very small percentage of respondents (2 percent) disagreed with the statement from the qualitative data, as it was indicated that political interference is actually fraud on its own, but the prevalence is not common because the South African media makes spreads it.

According to the interviews conducted with one OCPO official, political interference in public procurement increases fraud, “sometimes political authorities indirectly influence who should be awarded the bid based on political affiliation and through this process, squander taxpayers’ money towards preferential political affiliation self-interest advancement” added one official. “The political interference is mostly prevalent to the local sphere of government (municipalities), although this is the perception but sometimes it is proven to be true”, concluded one OCPO official.

Q 17: Conflict of interest in public procurement lead to fraud**Table 6.21**

Value	Count	Cumulative		Count	Percent
		Percent	Count		
2	7	2.07	7	2.07	
3	14	4.14	21	6.21	
4	140	41.42	161	47.63	
5	177	52.37	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	5	Mode	5

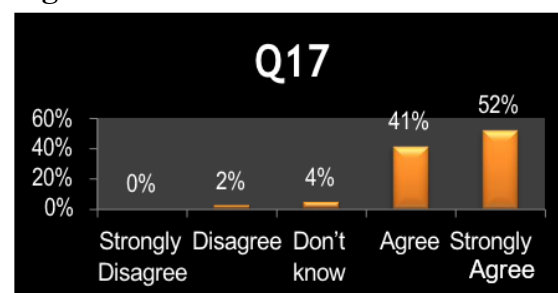
Figure 6.21

Figure 6.21 shows a 52 percent of respondents who strongly agreed and 41 percent agreed that there is some conflict of interest in public procurement leading to an increase in fraud which might hinder service delivery, with both combined amounted to 93 percent of respondents agreeing with the statement. The findings from respondents indicated that conflict of interest open doors for fraud but could be managed if there is proper disclosure mechanism. One qualitative respondent indicated that “in support of proper disclosure

mechanisms, government outlawed conflict of interest, as there is no government employee who may do business with the state in terms of the new Public Service Regulations of 2016.” However, a very small percentage of respondents (2 percent) disagreed with the statement. Respondents indicated that conflict of interest does not have to be fraudulent if dealt with properly, for example, a member should recuse him or herself from bid committee proceedings if a member has a conflict of interest.

Conflict of interest sometimes lead to corruption and fraud; these are sentiments shared by a senior OCPO official interviewed. For this purpose, curbing corruption will need a subject matter expert to thoroughly audit and review all procurement processes including conflict of interest, an official added. Furthermore, an official indicated that “conflict of interest is mainly due to uncoordinated legislative framework, lack of consequence management and lack or poor law enforcement.” The interviewee added that there should be a clear set up of exemplary punishment to public procurement prescripts transgressors and there is a need to create awareness about public procurement laws to practitioners and political principals.

During the interviews, another official indicated that conflict of interest escalate to fraud because sometimes public procurement practitioners manipulate and abuse procurement processes and prescripts. Therefore, remedies such as harsh punishment to transgressors should be instituted, contrary to the current practice, where sometimes transgressors are rewarded by getting promotion to higher positions instead of being reprimanded.

Q 18: Poor risk management strategies in public procurement lead to fraud

Table 6.22

Value	Count	Percent	Cumulative Count	Cumulative Percent
2	11	3.25	11	3.25
3	13	3.85	24	7.10
4	135	39.94	159	47.04
5	179	52.96	338	100.00
Total	338	100.00	338	100.00

Mean	4	Median	5	Mode	5
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Figure 6.22

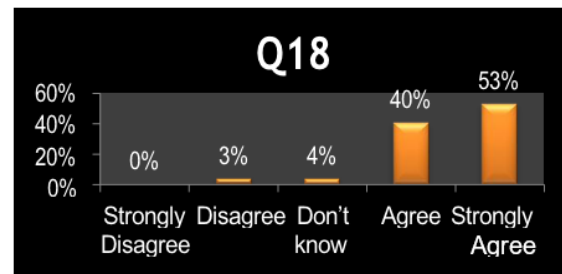


Figure 6.22 above shows that 53 percent of respondents agreed that poor risk management strategies in public procurement lead to fraud, which might in turn lead to poor or slow service delivery. The same sentiments were shared by 40 percent of respondents who agreed with the statement. As per qualitative data collected, respondents cited reasons such as a need for risk management to create controls in order to prevent and combat fraud, without it, the doors to fraud are wide open. Furthermore, respondents indicated that risk management is key to identifying potential fraud risks, and ensuring controls are in place to detect fraud and curb it before significant losses can be incurred.

However, a very small percentage of respondents (3 percent) disagreed with the statement. Respondents indicated that poor risk management strategies would lead to fraudulent activities only if various checks and balances are not implemented properly. Respondents gave

the example that while government can have a good risk management strategy if there is no proper implementation plan, the strategy does as good as not exist.

According to the senior OCPO official interviewed, there are legislative loopholes in public procurement laws, which sometimes lead to fraud. As explained by an official, legal framework for procurement should prescribe appropriate legal remedies equal to the severity of the unethical behaviour detected in the procurement system from a subject matter expert with auditing perspective. There are very few convictions to transgressors of public procurement prescripts, therefore unethical behaviour in public procurement is not deterred.

Q 19: Good governance principles reduce fraud

Table 6.23

			Cumulative	Cumulative	
Value	Count	Percent	Count	Percent	
1	2	0.59	2	0.59	
2	6	1.78	8	2.37	
3	11	3.26	19	5.64	
4	137	40.65	156	46.29	
5	181	53.71	337	100.00	
Total	337	100.00	337	100.00	
Mean	4	Median	5	Mode	5

Figure 6.23

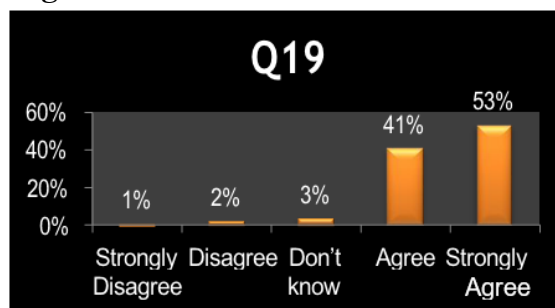


Figure 6.23 shows a combined 94 percent of participants who strongly agreed (53 percent) and further agreed (41 percent) with the statement which suggests that good governance principles reduce fraud which might enhance service delivery. According to qualitative data collected, findings indicate that good governance must be practiced even more by top management in order inculcate such morals through to all lower levels of employees. It was further revealed that ethics and good governance goes together and they need to be practiced and upheld at all management levels, it is not a training matter but rather a principle matter. This is merely because if the management uphold the values at all times, values will be implanted to all lower level officials.

Notwithstanding a very small percentage of respondents (2 percent) disagreed with the statement from the qualitative data and indicated that good governance, development of policies and processes are not guaranteed substitutes for curbing fraud and corruption. Qualitative data respondents indicated that “it is necessary to consistently make public examples of all those convicted of fraud and corruption so that there will be a clear display of commitment in eradicating the societal decay of fraud”, concluded one respondent.

Q 20: Public sector procurement practitioners prefer the “know-how” skills development training than an accredited training

Table 6.24

			Cumulative		Cumulative
Value	Count	Percent	Count	Percent	
1	17	5.03	17	5.03	
2	85	25.15	102	30.18	
3	45	13.31	147	43.49	
4	132	39.05	279	82.54	
5	59	17.46	338	100.00	
Total	338	100.00	338	100.00	
Mean	3	Median	4	Mode	4

Figure 6.24

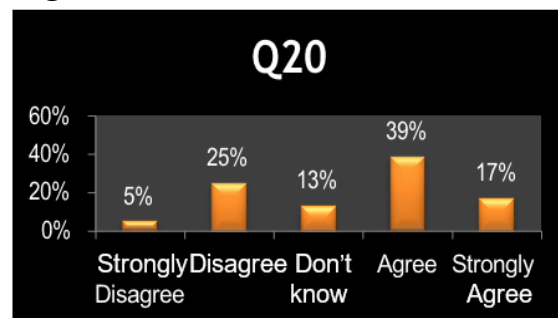


Figure 6.24 depicts that 39 percent of respondents agreed that public sector procurement practitioners prefer the “know-how” skills development training than an accredited training, sentiments concurred by 17 percent who further strongly agreed. However, a sizable percentage of respondents (25 percent) disagreed with the statement, which (according to researcher’s analysis) might mean that employees also prefer accredited training programme for future job applications. According to qualitative data, differing views came up, such as; the “know-how” training means the incompleteness of training towards any qualification and accreditation. “Until the accredited training is included as mandatory qualification and set as minimum entry requirements for senior positions in public procurement, the “know-how” training will always be favoured.”, concluded one qualitative respondent.

Q 21: Suitable training on public sector procurement legislation to the role-players will improve service delivery

Table 6.25

			Cumulative	Cumulative
Value	Count	Percent	Count	Percent
1	1	0.30	1	0.30
2	5	1.48	6	1.78
3	6	1.78	12	3.55
4	167	49.41	179	52.96
5	159	47.04	338	100.00
Total	338	100.00	338	100.00

Mean	4	Median	4	Mode	4
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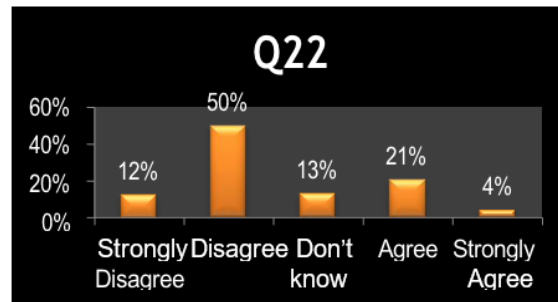
Figure 6.25



Figure 6.25 shows that a combined 97 percent of respondents agreed (50 percent) and strongly agreed (47 percent) with the statement that says, there is a relationship between a suitable training on public sector procurement legislation and an improved service delivery. According to the researcher’s analysis, this translates the possibility that employees are aware of the need for suitable training in public procurement for various role players in order to improve service delivery. Only 1 percent disagreed that there is any relationship, stating that “training is only effective if the trainee is willing and able to comprehend, with many people in government misplaced and doing jobs they are not really interested in; therefore, any suitable training would not work.”

Q 22: OCPO provides adequate training to public sector procurement practitioners**Table 6.26**

Value	Count	Cumulative		Count	Percent
		Percent	Count		
1	42	12.43	42	12.43	
2	168	49.70	210	62.13	
3	45	13.31	255	75.44	
4	70	20.71	325	96.15	
5	13	3.85	338	100.00	
Total	338	100.00	338	100.00	
Mean	3	Median	2	Mode	2

Figure 6.26

According to Figure 6.26, a combined 62 percent of the respondents strongly disagreed (50 percent) and disagreed (12 percent) that the OCPO provides adequate training to public sector practitioners. This shows that the training does not always take place when public sector practitioners need it; according to qualitative data collected some practitioners indicated that they have never been subjected to any training on public sector procurement, they only read the guiding manuals several times to acquaint themselves with the expected outcomes of their jobs.

However, 21 percent of respondents agreed that there is adequate training to public sector practitioners offered by the OCPO. This might indicate that training is offered by OCPO but only reaches around 20 percent of public sector procurement practitioners who need training; which is not a good reflection especially when public procurement receives a considerable number of qualified audit opinions, one qualitative respondent concluded.

According to an official from the OCPO, the upcoming new legislative framework for OCPO will promote a professionalisation and continuous career development initiatives for different job categories in procurement. The new legislative framework will also regulate stakeholder and relationship management between the OCPO, different spheres of government and procurement practitioners interacting with procurement system of government.

One official added that “there is an urgent need for some improvements in consultation with public procurement practitioners and all other stakeholders from all three spheres of government by National Treasury when drafting public sector procurement prescripts.” This is because, there is an increasing negative public perception that National Treasury does not consult with public procurement practitioners and other relevant stakeholders when drafting and issuing any public procurement prescripts. The researcher’s analysis is that, over and above the consultation, training of public procurement practitioners should emphasise practical versus theory.

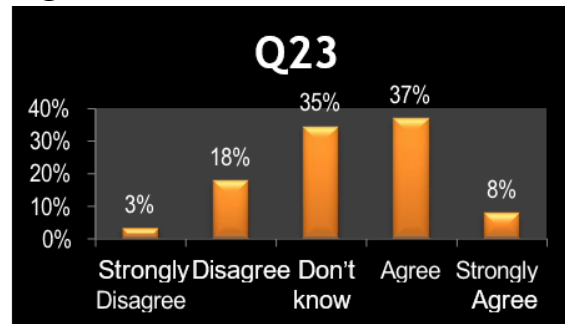
Q 23: Training providers on public sector procurement legislation are properly accredited with the relevant SETA

Table 6.27

Value	Count	Percent	Cumulative Count	Cumulative Percent
1	10	2.96	10	2.96
2	60	17.75	70	20.71
3	118	34.91	188	55.62
4	124	36.69	312	92.31
5	26	7.69	338	100.00
Total	338	100.00	338	100.00

Mean	3	Median	3	Mode	4
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Figure 6.27



As shown in Figure 6.27, 37 percent of participants agreed that training providers obtain the applicable Sector Education and Training Authority (SETA) accreditation. However, with some reservations observed in the qualitative data collected where views like most service providers are accredited with relevant SETA, but there is still a number of non-accredited and unethical service providers out there enticing delegates with gifts and perks to attend some bogus non-accredited training programmes, a huge money making scheme. Further reservations were evident from qualitative respondents that some training providers do training with no proper research and experience in public sector procurement operations. When delegates ask practical questions, they answer with private sector knowledge sometimes, which is inapplicable.

Furthermore, a huge worrying percentage of 35 percent showed that they “don’t know”; officials thus have diverse information of whether or not training providers obtain the applicable SETA accreditation. According to researcher’s analysis, this may translate to the lack of clear communication between training service providers and employees, which is so important.

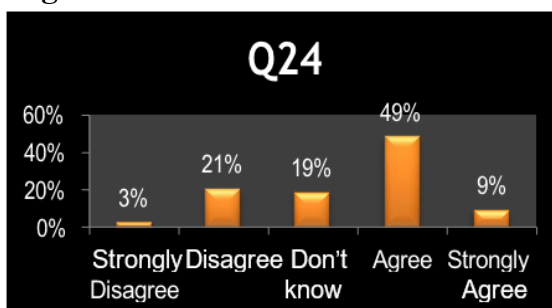
Q 24: Training material on public sector procurement legislation reflects the current and updated legislation

Table 6.28

Value	Count	Percent	Cumulative Count	Cumulative Percent
1	9	2.66	9	2.66
2	71	21.01	80	23.67
3	64	18.93	144	42.60
4	163	48.22	307	90.83
5	31	9.17	338	100.00
Total	338	100.00	338	100.00

Mean	3	Median	4	Mode	4
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Figure 6.28



From results presented in Figure 6.28, a combined 58 percent of participants agreed (49 percent) and strongly agreed (9 percent) that training material on public sector procurement legislation reflects the current and updated legislation. Findings indicate that officials are keeping themselves up to date on the dynamics, reforms and updates of the fluid public sector

procurement environment. This further indicate that respondents are appreciating the training material contents used in training for those who are fortunate (21 percent as per Q22 above) to receive such training.

Twenty-one percent of respondents disagreed with the statement citing reasons from qualitative data such as, “many of the training material is outdated with facilitators never been in the public sector procurement operations, therefore do not practical experience and lack understanding of the culture and the needs of government. Furthermore, a worrying 19 percent indicated that they “don’t know” which indicates there is a possibility of the risk that they might have been trained with out-dated material and they were not aware.

Q 25: Adequate training on public sector procurement legislation leads to unqualified audit opinions

Table 6.29

			Cumulative	Cumulative	
Value	Count	Percent	Count	Percent	
1	5	1.48	5	1.48	
2	56	16.57	61	18.05	
3	19	5.62	80	23.67	
4	186	55.03	266	78.70	
5	72	21.30	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	4

Figure 6.29



Figure 6.29 indicated, a combined 76 percent of participants agreed (55 percent) and 21 percent strongly agreed that the relationship between unqualified audit opinions and adequate training on public sector procurement legislation exists. Findings indicates that employees understand the need to be trained in public procurement in order to implement public procurement prescripts thereby avoid unqualified audit outcomes. This was with some reservations expressed by some respondents, which indicated that adequate training is a step towards unqualified opinions, but still requires trainees that are willing and able to comprehend.

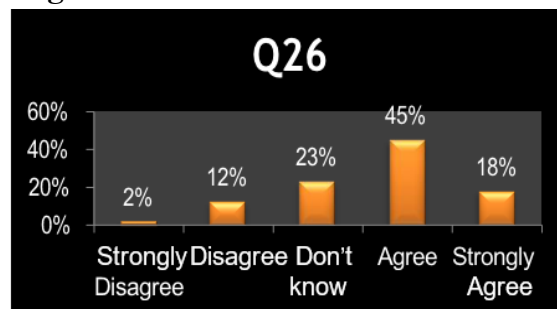
However, 16 percent of respondents disagreed with the statement indicating that audit opinions depends on a number of factors and training is one of them, therefore one cannot conclude that training will lead to unqualified audit opinions alone. Training should include case law analysis and court cases (as discussed in Q26 below) which involve public procurement processes and what will happen if procurement processes are compromised

Q 26: Access to legal expert advice on court cases and guidance from the OCPO is limited

Table 6.30

Value	Count	Percent	Cumulative	
			Count	Percent
1	6	1.78	6	1.78
2	42	12.43	48	14.20
3	77	22.78	125	36.98
4	151	44.67	276	81.66
5	62	18.34	338	100.00
Total	338	100.00	338	100.00
Mean	4		Median	4
			Mode	4

Figure 6.30



As indicated in Figure 6.30, a combined total of 63 percent of respondents agreed (45 percent) and 18 percent strongly agreed that access to legal expert advice on court cases and guidance from the OCPO is limited. Furthermore, qualitative data views supported these findings, as it was indicated that it has been proven several times roughly 9 out of 10 public procurement court cases, the government loses all 9 and to date OCPO has not given any position on whether to follow the court rulings or ignore them. According to researcher's opinion, one would be running a risk of same litigation of the sister institutions, because courts normally use previous court judgments to arrive to the next judgment. However, a worrying 23 percent indicated that they "don't know", which might mean that they are not following what is happening around the public procurement environment.

Q 27: Training curricula by tertiary education institutions is relevant to produce high calibre of public sector procurement legislation experts

Table 6.31

Value	Count	Percent	Cumulative	
			Count	Percent
1	25	7.40	25	7.40
2	98	28.99	123	36.39
3	49	14.50	172	50.89
4	125	36.98	297	87.87
5	41	12.13	338	100.00
Total	338	100.00	338	100.00
Mean	3		Median	3
			Mode	4

Figure 6.31



According to Figure 6.31, 37 percent of respondents agreed and 12 percent of respondents strongly agreed that training curricula by tertiary education institutions is relevant to produce high calibre of public sector procurement legislation experts. However, a sizable number of respondents at 29 percent disagreed with the statement and a further 7 percent strongly disagreed. As per qualitative data collected there were views, which suggested that there is a huge number of graduates who are produced by the tertiary institutions who have very limited understanding of how public sector procurement operates and further, have very limited knowledge of how to practically apply the prescripts in public procurement. Furthermore, there was a strong view that most traditional universities do not have public procurement curricula material applicable to the public sector, some respondents indicating that they had to

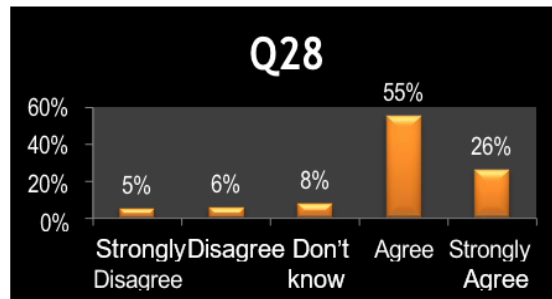
stop their studies after realising that the modules were purely factories' and warehouse-related and not even one piece of public sector procurement legislation were discussed.

Q 28: There are lessons to be learned by public sector procurement practitioners from private sector counterparts

Table 6.32

					Cumulative		Cumulative	
Value	Count	Percent		Count	Percent			
1	17	5.03		17	5.03			
2	20	5.92		37	10.95			
3	27	7.99		64	18.93			
4	185	54.73		249	73.67			
5	89	26.33		338	100.00			
Total	338	100.00		338	100.00			
Mean	4	Median	4	Mode	4			

Figure 6.32



According to Figure 6.32, a combined total of 81 percent of respondents agreed (55 percent) and 26 percent strongly agreed, that there are lessons to be learned by public sector procurement practitioners from private sector counterparts. Researcher analysed this as a good appreciation of the existence and complementarity of these two procurement sectors. As per qualitative data collected there were views that suggested that the private sector is running continuous improvement of their processes that creates new systems and techniques that seems to not find its way into government. That is merely because there is a culture in government not to embrace innovation.

However, there was a total of 11 percent who did not concur with the statement stating among other reasons that the private companies work on a completely different level of compliance and have much more freedom. Due to fraud and corruption in the public sector the same freedom and easy processes have been taken away to ensure fair government procurement processes.

Q 29: Legal expert guidance given by the OCPO is sufficient to improve public procurement operations

Table 6.33

		Cumulative		Cumulative	
Value	Count	Percent	Count	Percent	
1	14	4.14	14	4.14	
2	97	28.70	111	32.84	
3	91	26.92	202	59.76	
4	115	34.02	317	93.79	
5	21	6.21	338	100.00	
Total	338	100.00	338	100.00	
Mean	3	Median	3	Mode	4

Figure 6.33



Respondents were almost split down in the middle in terms of their views on whether or not the legal expert guidance given by the OCPO is sufficient to improve public procurement operations. This is further supported by both mean and median scores on 3 (Table 6.33)

which represented “I don’t know” on a Likert scale utilised in survey. Figure 6.33 indicates clearly and proves this notion with a combined total of 40 percent concurring with the statement, 33 percent not concurring with the statement and a worrying number of 27 percent of respondents indicated that they don’t know if there is legal expert given by OCPO which can improve public procurement operations.

As per researcher’s analysis of these results, this might mean that there is no legal expert provided or if it is provided it is not effective to help the practitioners. This is further illustrated on qualitative data collected where respondents indicated that they have limited experience of getting any advice from the OCPO (not only legal) and further indicated that “it seems as if the OCPO is so far distant from institutional public procurement operations; their advices are normally vague or academic”, concluded one qualitative respondent.

Q 30: Legal expert guidance and practice notes issued by OCPO consider recent court judgments on public sector procurement

Table 6.34

			Cumulative	Cumulative	
Value	Count	Percent	Count	Percent	
1	14	4.14	14	4.14	
2	55	16.27	69	20.41	
3	93	27.51	162	47.93	
4	152	44.97	314	92.90	
5	24	7.10	338	100.00	
Total	338	100.00	338	100.00	
Mean	3	Median	4	Mode	4

Figure 6.34

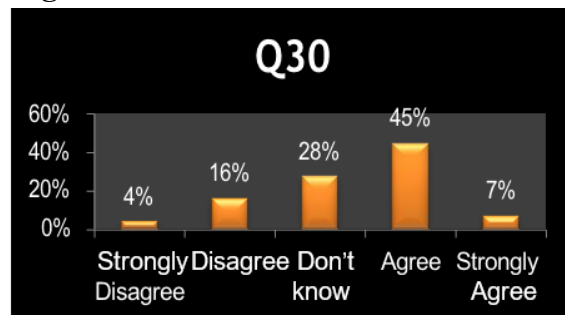
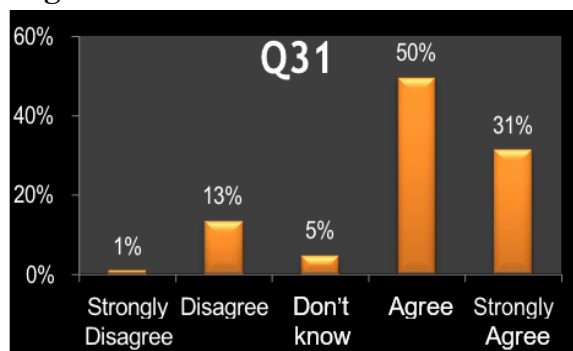


Figure 6.34 indicates that a combined total of 52 percent respondents agreed (45 percent) and another 7 percent strongly agreed that the OCPO do consider recent court judgments when issuing practice notes on public sector procurement. However, combined a total of 20 percent didn’t concur with the statement citing reasons like, people in government understand the loopholes in legislation, the procedural mistakes and the skills level in procurement units, furthermore there is a limited review of case law to address those loopholes. Lastly, the information from this observation is not reaching the lawmakers (parliament). A worrying 28 percent of respondents indicated that they “don’t know” if the OCPO consider recent court judgments when issuing practice notes; researcher’s analysis is that this might mean that it is not done or if it is done it is not effective to help the practitioners to operate efficiently.

Q 31: Gaps in legislation for some procurement processes promotes corruption**Table 6.35**

Value	Count	Percent	Cumulative Count	Cumulative Percent	
1	3	0.89	3	0.89	
2	46	13.61	49	14.50	
3	16	4.73	65	19.23	
4	166	49.11	231	68.34	
5	107	31.66	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	4

Figure 6.35

As per Figure 6.35 above, a combined 81 percent of participants agreed (50 percent) and strongly agreed (31 percent) that gaps in legislation for some procurement processes promotes corruption. Some respondents on qualitative data collected indicated that gaps in the legislation should be attended to as soon as they are discovered not to wait for too long while the gap is being used for corrupt activities. The respondent gave an example of Regulation 32 of the MFMA Municipal SCM Regulations as a misused gap in procurement legislation.

However, there were 13 percent of respondents who disagreed with the statement, according to qualitative data gathered; respondents indicated that it is not gaps that cause corruption because the legislation is fairly complete. In most cases, it has been because of the current legislation not applied or bypassed by officials. Furthermore, one respondent indicated that “where sections of legislation seemed too technical there are regulations and practice notes that gives further guidance and interpretations although sometimes they are also confusing.”

As alluded to by an OCPO official interviewed, “there might be silence in some procurement legislation sections; it is the objective of the proposed new public procurement legislative framework to close various legislative gaps that might be leading to corruption currently”. The official further added that the legislative reform will review and benchmark current procurement processes with the intention of modernising the legal and operational procurement framework.

Q 32: Public procurement conflict of interest leads to corruption**Table 6.36**

Value	Count	Percent	Cumulative Count	Cumulative Percent
1	0	0.0	0	0.00
2	17	5.03	17	5.03
3	4	1.18	21	6.21
4	171	50.59	192	56.80
5	146	43.20	338	100.00
Total	338	100.00	338	100.00

Mean	4	Median	4	Mode	4
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Figure 6.36

As per Figure 6.36 a combined 94 percent of participants strongly agreed (51 percent) and agreed (43 percent) with the statement which suggests that some conflict of interest in public procurement are leading to an increase in corruption. Which according qualitative data analysed might hinder service delivery; these findings indicate further that in terms of conflict of interest it does open the door for corruption. However, these can be managed if there is proper disclosure as recently government outlawed conflict of interest insofar as no government employee may do business with the state in terms of the Public Service Regulations of 2016. However, a very small percentage of respondents (5 percent) disagreed with the statement.

According to one senior OCPO official, it is not about greediness; however, it is about the level of ethical and moral culture of a society in generally, because fraud and corruption takes advantage of legislative loopholes. As a principle, just as the human body is regulated by its immune system, laws regulate society. Where the body detects a virus it builds antibodies to heal the biological system of the body to normal; just so in the legal system of procurement. Where unethical behaviours are detected in the procurement system, the legal system needs to be reviewed and develop legal and policy measures to curb unethical behaviours. However, there was a dissenting view among the interviewed OCPO officials indicating that; sometimes public procurement conflict of interest does lead to corruption.

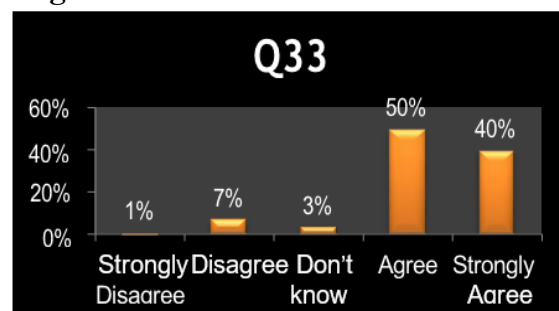
Q 33: The lack of transparency in public procurement leads to corruption

Table 6.37

Value	Count	Percent	Cumulative Count	Cumulative Percent
1	2	0.59	2	0.59
2	23	6.80	25	7.40
3	11	3.25	36	10.65
4	167	49.41	203	60.06
5	135	39.94	338	100.00
Total	338	100.00	338	100.00

Mean	4	Median	4	Mode	4
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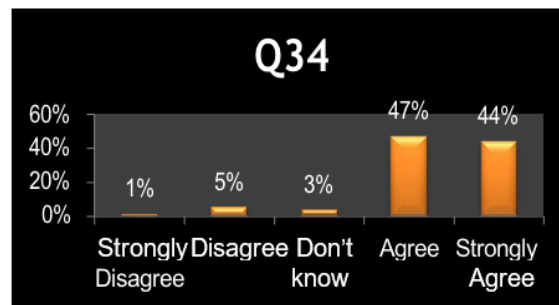
Figure 6.37



According to Figure 6.37, a combined 90 percent of respondents agreed (50 percent) and strongly agreed (40 percent) that the lack of transparency in public procurement leads to corruption; these findings were also supported by qualitative data collected, which also suggested that transparency is a good control. However, the qualitative data respondents saw it important that the definition of transparency need to be understood properly, as it does not imply that processes must be transparent while procurement underway, since the leaking of information could lead to abuse in itself. According to qualitative respondents, the key to transparency is documenting the process and decisions for later public scrutiny; therefore, such transparency does deter corruption. A further small 7 percent disagreed and revealed that the lack of transparency in public procurement does not lead to corruption especially if transparency is handled correctly and public participation is upheld in compliance with regulated prescripts.

Q 34: High level of irregularities in public procurement lead to corruption**Table 6.38**

Value	Count	Percent	Cumulative	
			Count	Percent
1	3	0.89	3	0.89
2	17	5.03	20	5.92
3	12	3.55	32	9.47
4	157	46.45	189	55.92
5	149	44.08	338	100.00
Total	338	100.00	338	100.00
Mean	4		Median	4
			Mode	4

Figure 6.38

In Figure 6.38, a combined total 91 percent of respondents agreed (47 percent) and strongly agreed (44 percent) with the statement which suggest that high level of irregularities in public procurement lead to corruption. These results were supported by qualitative data, which indicated that it depends on how one defines irregularities in terms of the legislations and irregularities stated in the Auditor General's report. One qualitative respondent indicated that "at times government incur irregularities due to political pressure on the ground by bypassing the procurement processes to accelerate service delivery." For example, government needed to fund the short fall created by implementing no fee increment in institutions of higher learning which was not budgeted for, thus on its own it is an unauthorised transaction leading to irregular transaction to fund the shortfall.

A further small percentage of respondents at 5 percent disagreed with the statement and indicated that it is the other way round; it is corruption that leads to irregularities. One respondent narrated further and said, by being corrupt and not following legislation to the later, the public procurement practitioners are committing irregularities.

Q 35: Corruption delays service delivery**Table 6.39**

Value	Count	Percent	Cumulative	
			Count	Percent
1	0	0.0	0	0.00
2	4	1.18	4	1.18
3	4	1.18	8	2.37
4	100	29.59	108	31.95
5	230	68.05	338	100.00
Total	338	100.00	338	100.00
Mean	5		Median	5
			Mode	5

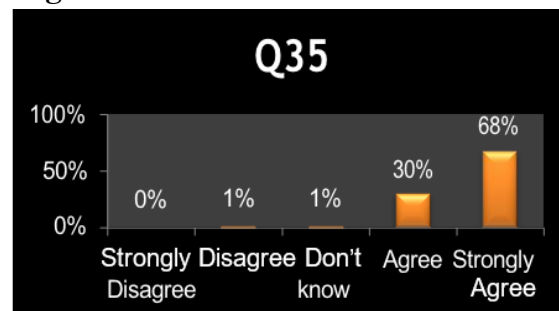
Figure 6.39

Figure 6.39 shows that a combined total of 98 percent of respondents agreed (30 percent) and strongly agreed (68 percent) with the statement that suggests corruption delays service delivery. Some extracts from qualitative data indicated that corruption delays service delivery in multiple ways, the most common being that it attracts more controls that makes the government processes more onerous and time consuming. Tenders take up to six months from drafting of specifications to awarding the tender. In addition, if suppliers are awarded contracts based on other criteria than past experience and price, the chances of getting

substandard quality are high, it becomes worse if a premium was paid, putting more pressure on limited funds and therefore making it impossible to meet service delivery demands.

One official from the OCPO while being interviewed indicated that corruption sometimes delays service delivery, as resources are diverted from government socio-economic planned programmes to individual self-enrichment activities thereby creating questionable community expectations that the government cannot deliver on its promises. Some of the forms of corruption and fraudulent activities are bid rigging. Sometimes bids are awarded to bidders who do not qualified to do the work in exchange for self-interest advances done through bribing procurement practitioners involved in the bid awarding processes. Bid collusion and anti-competitive behaviours are some of the unethical behaviours delaying service delivery, where bidders collude, which bidder should win the bid and collude on price fixing.

Another senior OCPO official also added that corruption delays service delivery because any money defrauded from government was supposed to be used to advance the course of service delivery sometimes then service delivery is delayed or postponed or never happen at all. “The challenge emerges as the focus turns on self-enrichment, then compromises service delivery and sometimes favouritism of awarding contracts to bidders lacking work expertise”, one senior official concluded.

Q 36: Enforcing SARS Act through Tax Clearance Certificates compliance delays service delivery

Table 6.40

		Cumulative		Cumulative	
Value	Count	Percent	Count	Percent	
1	65	19.23	65	19.23	
2	187	55.33	252	74.56	
3	11	3.25	263	77.81	
4	43	12.72	306	90.53	
5	32	9.47	338	100.00	
Total	338	100.00	338	100.00	
Mean	2	Median	2	Mode	2

Figure 6.40



Figure 6.40 shows that it was disagreed by 55 percent of the respondents that enforcing the SARS Act through Tax Clearance Certificate (TCC) compliance delays service delivery. Sentiments that were also strongly disagreed upon by 19 percent of respondents. Some respondents on qualitative data indicated that enforcing the SARS Act through TCC help to boost the government revenue, promote good business practices and grow the economy. Therefore, public sector procurement is the right platform to achieve socio-economic transformation and other related government programmes. Furthermore, enforcing tax clearance must be a priority for all government procurement so that all contracted service providers pay what is due to SARS as per law. However, there was a combined 31 percent of respondents who agreed with the statement, indicating that SARS need to speedily find a solution on electronic verification of clearance to ensure that service providers can also test their own standing from time to time. One respondent indicated that “it is true that SARS compliance delays service delivery, but it is necessary, as this is a delay that cannot be avoided, as government need money to pay service providers.”

Q 37: BBBEEA is another form of public sector procurement discrimination**Table 6.41**

					Cumulative		Cumulative	
Value	Count	Percent	Count	Percent				
1	79	23.37	79	23.37				
2	166	49.11	245	72.49				
3	14	4.14	259	76.63				
4	47	13.91	306	90.53				
5	32	9.47	338	100.00				
Total	338	100.00	338	100.00				
Mean	2	Median	2	Mode	2			

Figure 6.41

Figure 6.41 above shows that a combined total 72 percent of respondents disagreed (49 percent) and other respondents strongly disagreed (23 percent) with the statement which suggested that BBBEEA is another form of public sector procurement discrimination. As per the qualitative data collected it was evident that some of the reasons given in support of disagreement was that BBBEE seeks to transform the economy and balance the imbalances of the past as “black” communities are now getting opportunities to contribute towards gross domestic product of the country. In addition, one respondent indicated, “that there is a political will to redress the inequalities of the past, if the public sector procurement is an appropriate tool, remains questionable”. The impact of BBBEE could claim a minority of black businesses get preference to government procurement, but the cost does not justify the impact, one respondent added.

However, there was a combined total of 23 percent who agreed with the statement citing reasons like, BBBEE is not making an economic impact, and it creates a new few black individual elites. However, in no way improving the plight of the black masses therefore it is not economic empowerment, it is indeed economic affirmative action. As stated by the OCPO official on an interview, “BBBEEA is not another form of public sector procurement discrimination because there is a constitutional requirement to achieve equity in South Africa, due to the past discriminatory governance regime and system of apartheid.” Therefore, there should be a reversal of the past discrimination through preferential legislation and policies to remedy the situation towards equality, as required through the Constitution section 217 (2) and (3) on procurement. In some terms, BBBEE discrimination is a good one because the country is trying to balance the equity versus inequality; moreover, BBBEE is needed to transform the society through business opportunities and most importantly change ownership of business enterprises doing business with government institutions.

Q 38: There is political will to revise preferential procurement point systems**Table 6.42**

			Cumulative		
Value	Count	Percent	Count	Percent	
1	18	5.33	18	5.33	
2	59	17.46	77	22.78	
3	89	26.33	166	49.11	
4	134	39.64	300	88.76	
5	38	11.24	338	100.00	
Total	338	100.00	338	100.00	
Mean	3	Median	4	Mode	4

Figure 6.42

As per Figure 6.42 above, 40 percent of respondents agreed with the statement, which suggest that there is political will to revise preferential procurement point systems, the same sentiments were supported by a further 11 percent of respondents. Some reasons cited by some of the respondents in qualitative data collected was that the current 80/20 and 90/10 point system does not favour previously disadvantaged suppliers because the points does not actually make a huge difference. Because if the BBBEE company is competing with a manufacturer in that sector; therefore 80/20 of 90/10 is not yielding the intended results therefore, the system need to be revised.

However, 18 percent of respondents disagreed with the statement stating among other reasons such as, 80/20 system implies that government is willing to pay as much as a 25 percent premium to a supplier that is 100 percent BBBEE compliant compared to a non-compliant supplier, while the 90/10 system makes the premium to be 11 percent. “Businesses established on the hope of being paid a premium are not competitive in an open market and will not be sustainable other than being dependent on government contracts”, one qualitative respondent added. In researcher’s own analysis, premiums are paid to establish empowered businesses that are dependent on government, the model does not drive economic growth nor is it sustainable; therefore, it becomes a system of redistributing wealth in an uneconomic way.

As per the interviews with the officials in the OCPO, there was a common understanding that there is a political will to revise preferential procurement point systems; this is due to the fact that the current preferential procurement system is currently being reviewed under the new PPPFA regulations, 2017 and also through the new public procurement bill making it easier to set-aside government contracts based on preferential statistical evidence and policy responses.

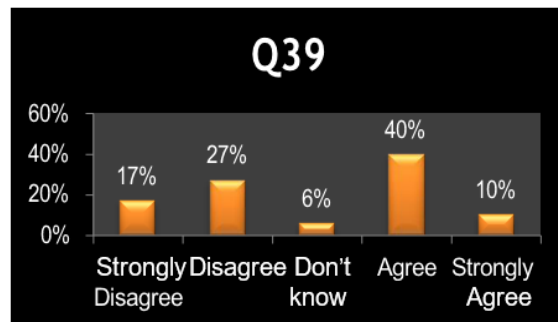
Q 39: 20 or 10 points on 80/20 or 90/10 preferential point systems are sufficient to ensure accelerated socio-economic transformation

Table 6.43

Value	Count	Percent	Cumulative Count	Cumulative Percent
1	57	16.86	57	16.86
2	93	27.51	150	44.38
3	20	5.92	170	50.30
4	134	39.64	304	89.94
5	34	10.06	338	100.00
Total	338	100.00	338	100.00

Mean	3	Median	3	Mode	4
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Figure 6.43



According to Figure 6.43 above, a combined 50 percent of respondents have agreed (40 percent) and a further 10 percent of respondents strongly agreed with the statement, which suggest that 20 or 10 points on 80/20 or 90/10 preferential point systems are sufficient to ensure accelerated socio-economic transformation. As per the qualitative data collected from respondents it indicated that in essence, a previously disadvantaged supplier is allowed to price 11–25 percent more than that of a supplier previously advantaged therefore, this should create sufficient competitive advantage; anything higher than this would lead to inefficiency in government expenditure.

However, a combined 44 percent of respondents disagreed (17 percent) and further respondents strongly disagreed (27 percent) with the statement above, where qualitative data respondents indicated that up until now the 80/20 or 90/10 system is making no significant difference, to practitioners it is one of the rules that must be implemented. “This rule has good intentions but the implementers have found loopholes to benefit themselves”, concluded one qualitative respondent.

Q 40: Using public sector procurement to achieve socio-economic transformation delays service delivery

Table 6.44

Value	Count	Percent	Cumulative Count	Cumulative Percent
1	46	13.61	46	13.61
2	187	55.33	233	68.93
3	22	6.51	255	75.44
4	60	17.75	315	93.20
5	23	6.80	338	100.00
Total	338	100.00	338	100.00

Mean	2	Median	2	Mode	2
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Figure 6.44



According to Figure 6.44, a combined total 69 percent of respondents disagreed (55 percent) and strongly disagreed (14 percent) with the statement which suggest that service delivery get delayed by promoting socio-economic transformation through public procurement. From the qualitative data respondents indicated that “it cannot be correct that when public procurement enforces the socio economic transformation through its regulations delays

service delivery.” The intentions are good however; respondents believe that South Africa still has a long way to improve socio-economic transformation. In addition, there is no law that prohibits suppliers that are not complying with socio-economic transformation from participating in a tendering process or not being evaluated (although the new PPPFA regulation 2017 has pre-qualifications that prohibits).

However, 18 percent of the respondents agreed with the statement, which says that service delivery get delayed by promoting socio-economic transformation through public procurement. According to researcher’s analysis, this illustrates that socio-economic transformation agendas can be implemented, but not through the public procurement channels.

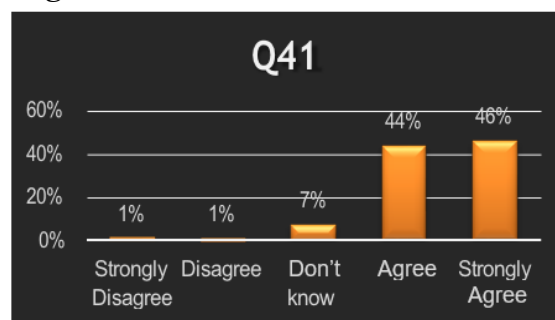
According to the interviews conducted with the officials in the OCPO, using public sector procurement to achieve socio-economic transformation does not delay service delivery. A legitimate goal to achieve socio-economic transformation through public procurement is through the BBBEE proper implementation. A slightly differing view was noted from the interviews that socio-economic initiatives using procurement delay service delivery because a considerable number of prescripts are kept in different departments for implementation. That is, the DTI commissions BBBEE, National Treasury commissions PPPFA, SMMEs opportunities are commissioned by Department of Small Business Development, National Housing Policy is commissioned by Department of Human Settlements and procurement of furniture products by government entities from inmates is commissioned by the Department of Correctional Services. Therefore, changes in one act will call for a change in another act, which is kept by another government entity, which might delay service delivery.

Another challenge noted by one official from the OCPO is that there is no flexibility of 20/10 points per sector or industry, currently the 20/10 preferential points are generic and not sector specific. Some specific set-asides are needed in some critical and ownership skewed industries. “For now 20/10 preferential points are not sufficient, the one-size-fits-all is not working in public procurement”, added one senior OCPO official. As a result, there should be differentiated procurement per industry and category and be given its own preference in procurement, for example textile industry be given 70 points for BBBEE and maybe ICT industry be given 90 points preferential treatment depending on some specific industry dynamics.

According to the researcher’s analysis, the balancing act is needed between socio-economic initiatives and service delivery acceleration. “The sub-contracting policies are not achieving the intended objectives because many of tender winners gives the whole contract to the traditional established suppliers, then it does not serve the purpose it was intended for”, one senior OCPO official added.

Q 41: Fronting practices reverse efforts of government transformation agenda**Table 6.45**

					Cumulative		Cumulative	
Value	Count	Percent		Count		Percent		
1	4	1.18		4		1.18		
2	3	0.89		7		2.07		
3	25	7.40		32		9.47		
4	148	43.79		180		53.25		
5	158	46.75		338		100.00		
Total	338	100.00		338		100.00		
Mean	4	Median	4	Mode	5			

Figure 6.45

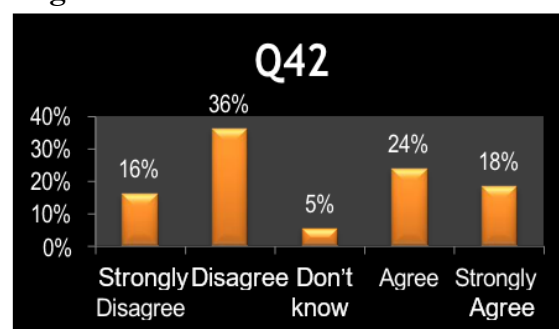
As illustrated by Figure 6.45 a combined 90 percent of respondents agreed (44 percent) and further respondents strongly agreed (46 percent) with the statement that suggests that fronting practices reverse efforts of the government transformation agenda. Some qualitative data respondents concurred that the majority of previously disadvantaged suppliers do not have skills or capabilities of executing certain contracts, for example, well-known big construction companies in the country either will go for fronting in order to get business from government or embark in bid rigging and other unethical behaviours. Only 7 percent of respondents indicated they “don’t know.”

According to one OCPO official, fronting is more of an unethical behaviour on the part of bidders taking advantage of legislative loopholes. Uncoordinated procurement processes (BBBEE certificate verification) orchestrate fronting, “sometimes officials manipulate procurement prescripts to engage in fronting activities, sometimes fronting is due to desperation, and greedy on the part of bidders, currently the law have loopholes that makes it difficult to detect fronting”, one senior OCPO official conclude.

Q 42: Procurement centralisation will improve service delivery**Table 6.46**

Value	Count	Percent	Cumulative Count	Cumulative Percent
1	54	15.98	54	15.98
2	122	36.09	176	52.07
3	19	5.62	195	57.69
4	80	23.67	275	81.36
5	63	18.64	338	100.00
Total	338	100.00	338	100.00

Mean	3	Median	2	Mode	2
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Figure 6.46

As per Figure 6.46, a combined total of 52 percent of respondents disagreed (36 percent) and strongly disagreed (16 percent) with the statement that suggest that procurement centralisation will improve service delivery. These findings indicate that respondents do not believe that service delivery improvement depends on centralising public procurement. From the qualitative data collected, respondents indicated that centralisation would delay the procurement processes and therefore delay service delivery due to the broader nature of government services needed to be procured. Furthermore, qualitative respondents thought

that centralisation of procurement (or transversal procurement) tend to favour one province which Gauteng based suppliers, so centralisation must be seen as regional centralisation for regional departments for example, centralisation per province. The condition for public procurement efficiency will also be that a strong central procurement team be established for each region (province) at a clustered approach, if total centralisation was to be adopted.

However, a combined 42 percent of respondents agreed (24 percent) and other respondents strongly agreed (18 percent) with the statement citing reasons such as centralisation is key and it would ensure procurement uniformity among all government institutions. “OCPO should establish regional offices in all provinces to report direct to National OCPO”, one qualitative respondent concluded.

Q 43: Public sector institutions are aware of and are utilising the available transversal contracts

Table 6.47

			Cumulative	Cumulative	
Value	Count	Percent	Count	Percent	
1	11	3.25	11	3.25	
2	73	21.60	84	24.85	
3	35	10.36	119	35.21	
4	173	51.18	292	86.39	
5	46	13.61	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	4

Figure 6.47



Figure 6.47 depicts that a combined 65 percent of respondents agreed (51 percent) and strongly agreed (14 percent) with the statement which suggested that public sector institutions are aware of and are utilising the available transversal contracts. Some of the respondents in qualitative data indicated that some public sector institutions use transversal contracts, however if there was a buy-in from various stake holders more benefits could have been yielded from the system by now. However, there were 22 percent of respondents who disagreed with the statement stating that transversal contracts are mostly used by national departments; provincial departments do not use it as much as they can, mainly due to the norms and standards not being aligned, or because of the appointed suppliers not having a strong regional (provincial) footprint.

Q 44: Transversal contracting implementation improves service delivery**Table 6.48**

			Cumulative		
Value	Count	Percent	Count	Percent	
1	9	2.66	9	2.66	
2	33	9.76	42	12.43	
3	30	8.88	72	21.30	
4	193	57.10	265	78.40	
5	73	21.60	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	4

Figure 6.48

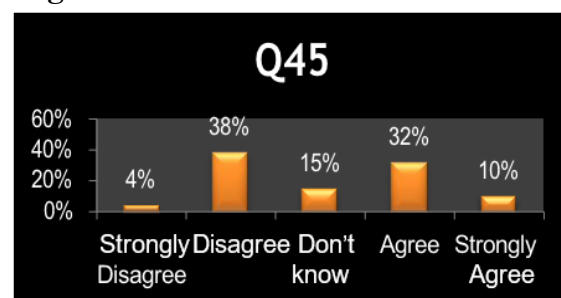
As per Figure 6.48, a large 78 percent respondents agreed (57 percent) and further (21 percent) strongly agreed with the statement which suggested that transversal contracting implementation improves service delivery. Some of the reasons indicated by qualitative respondents in support of this statement were that “there are so many individual suppliers that get contracts repeatedly and most of them do not have the resources to execute contracts.” Therefore, awarding large amount of transversal contracts to various qualified service providers will definitely improve service delivery.

However, 10 percent of respondents disagreed with the statement stating that transversal contracting might even have negative effects on service delivery, since the awarded suppliers on a transversal contract do not have strong regional footprints. Furthermore, contract management for such suppliers becomes difficult and sometimes impossible. “the contracts are also sometimes not financially viable for the supplier to deliver as a result they resort to deliver a substandard service”, one qualitative respondent concluded.

Q 45: Current public sector procurement legislation prevents full implementation of strategic procurement by government**Table 6.49**

Value	Count	Percent	Cumulative Count	Cumulative Percent
1	14	4.14	14	4.14
2	129	38.17	143	42.31
3	50	14.79	193	57.10
4	107	31.66	300	88.76
5	38	11.24	338	100.00
Total	338	100.00	338	100.00

Mean	3	Median	3	Mode	2
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Figure 6.49

As illustrated in Figure 6.49, a combined 42 percent of respondents disagreed (38 percent) and strongly disagreed (4 percent) with the statement which suggested that current public sector procurement legislation prevents full implementation of strategic procurement by government. From qualitative data collected, it was evident that some respondents thought that, as part of the strategic procurement, government can identify certain projects to be executed by designated groups of person(s) but that is prohibited since it is classified as set-asides in terms of the currently procurement legislation.

However, a combined 42 percent of respondents agreed (32 percent) and strongly agreed (10 percent) with the above statement citing reasons such as, “there are no limitations to the procurement legislation per se, other than a lack of clarity on how National Treasury Regulations 16A6.5 is supposed to be used”, one qualitative respondent noted. Since the current interpretation is that participation in transversal contracts is voluntarily, while it supposed to be compulsory if this system is to work properly. Furthermore, respondents indicated that the real challenge is Section 38(2) of the PFMA, which limits the powers of accounting officers to contracts not exceeding the Medium Term Expenditure Framework (MTEF), which is basically around 3 years.

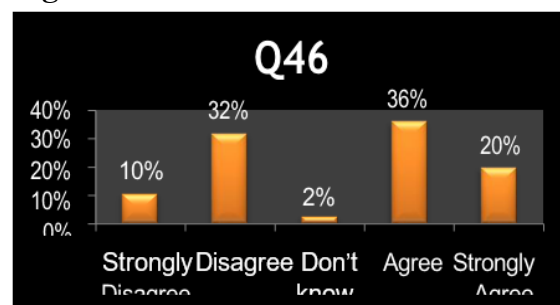
Q 46: Clean audits translate to best service delivery

Table 6.50

Value	Count	Percent	Cumulative Count	Cumulative Percent
1	35	10.36	35	10.36
2	108	31.95	143	42.31
3	8	2.37	151	44.67
4	121	35.80	272	80.47
5	66	19.53	338	100.00
Total	338	100.00	338	100.00

Mean	3	Median	4	Mode	4
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Figure 6.50



As per Figure 6.50, a combined 56 percent of respondents agreed (36 percent) and strongly agreed (20 percent) that clean audits translate to best service delivery with some reasons given such as, a clean audit is based on the correctness of financial statements, compliance to legislation and the accurate reporting of the set organisational strategic goals. However, there was a combined 42 percent of respondents who disagreed (32 percent) and strongly disagreed (10 percent) with the statement above citing reasons such as, clean audits are at the expense of under-spending and lack of innovation which is not improving service delivery. “Government is caught in the process of compliance whilst delaying the service delivery”, one qualitative respondent concluded. Therefore, according to the researcher’s own analysis, a balanced view must be carefully crafted, where all predetermined objectives must be met before a clean audit can be recognised.

Q 47: Removing SCM from (Chief Financial Officer) CFO will improve SCM performance

Table 6.51

			Cumulative		Cumulative	
Value	Count	Percent	Count	Percent		
1	57	16.86	57	16.86		
2	104	30.77	161	47.63		
3	40	11.83	201	59.47		
4	53	15.68	254	75.15		
5	84	24.85	338	100.00		
Total	338	100.00	338	100.00		
Mean	3	Median	3	Mode	2	

Figure 6.51



According Figure 6.51, a combined 48 percent of respondents disagreed (31 percent) and strongly disagreed (17 percent) with the statement which suggest that removing SCM from the office of the CFO will improve SCM performance. Some views from qualitative data collected indicated that the CFO office is an appropriate branch for SCM to be housed in order to ensure that limited government resources are well managed. The CFO is responsible for the institutions' Annual Financial Statements (AFSs). SCM is a critical component of the AFSs; therefore, to ensure that SCM processes are not compromised the CFO must ensure procedures are in place to obtain clean audits. However, a total 41 percent of participants agreed (16 percent) and strongly agreed (25 percent) with the statement citing reasons such as, there should be a senior official at the level of the CFO who has a vast knowledge of public procurement processes and have to be independent and only report to the accounting officer.

Q 48: There is a proper and fully functional public sector procurement performance monitoring and evaluation strategy

Table 6.52

			Cumulative	Cumulative	
Value	Count	Percent	Count	Percent	
1	50	14.79	50	14.79	
2	181	53.55	231	68.34	
3	44	13.02	275	81.36	
4	48	14.20	323	95.56	
5	15	4.44	338	100.00	
Total	338	100.00	338	100.00	
Mean	2	Median	2	Mode	2

Figure 6.52

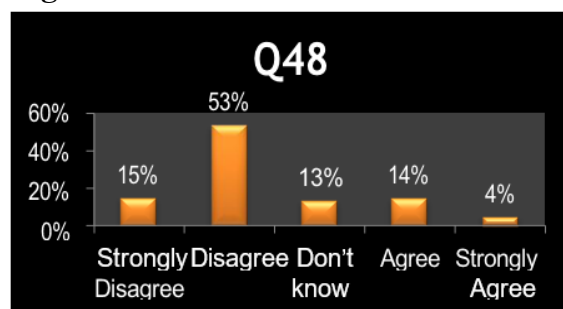


Figure 6.52 shows a combined 68 percent of respondents disagreed (53 percent) and others strongly disagreed (15 percent) that there is a well-functioning performance monitoring and evaluation strategy for public procurement for performance management. As per qualitative data respondents, government still has a challenge in getting monitoring & evaluation done correctly, largely due to lack of skilled personnel in the area of Business Intelligence reporting. This role is always left to consultants who due to less insider-knowledge of internal government processes therefore use assumptions about their performance monitoring and evaluation reports. Furthermore, OCPO and AGSA's roles must be strengthened to ensure compliance and ensure severe punitive measures against poor performance; because generally,

suppliers who do not perform as per contract are awarded tenders repeatedly by same government institutions or different ones. This is merely because if an underperforming supplier is not reported and listed among restricted suppliers, there is no public procurement prescript that prevents that supplier to be reappointed.

However, 14 percent of respondents thought otherwise and agreed with the statement that monitoring and evaluation mechanisms are there in the form of predetermined objectives in the Annual Performance Plan (APP). There are also various performance monitoring tools such as Financial Management Capability Maturity Model (FMCMM), internal audit, the AGSA, the relevant treasuries, the monitoring and evaluation (M&E) units of the Provincial Premiers' Offices, the DPME, legislatures, portfolio committees, SCOPA and others. However, the fundamental flaw is, nobody tests if the predetermined objectives are met adequately or not, for example building a hospital, but there are no doctors, doctors are then added, but there are no equipment and medicines, this is due to poor planning.

The lack of monitoring and evaluation of public sector procurement performance is due to a lack of legislative oversight requirements that is according to one OCPO official interviewed. However, the new public procurement legal framework is planned to address the monitoring and evaluation processes, therefore obligate performance monitoring review of procurement system in government entities. The official added that OCPO have a unit called Governance, Monitoring and Compliance, which among other duties, ensures monitoring and evaluation of public procurement prescripts compliance. However, the OCPO cannot monitor every government entity across the country due to capacity constraints. Intensifying training, proper planning and making public procurement automated can aid in the monitoring and evaluation processes.

Q 49: There is a need to develop or review the public sector procurement performance monitoring and evaluation strategy

Table 6.53

			Cumulative	Cumulative	
Value	Count	Percent	Count	Percent	
1	3	0.89	3	0.89	
2	11	3.25	14	4.14	
3	18	5.33	32	9.47	
4	190	56.21	222	65.68	
5	116	34.32	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	4

Figure 6.53



According to Figure 6.53 above, a combined 90 percent of respondents agreed (56 percent) and others strongly agreed (34 percent) with the statement which suggest that it is important to develop or review public procurement performance strategy. This statement is also concurred with 68 percent of respondents in Q48 above. From qualitative data respondents in support of the above statement, they indicated that public sector procurement lack monitoring from procurement to payment of service providers. Contract management is not fully effective and reflects badly on monitoring and evaluation within procurement functions

and best practices should be shared across government institutions and across all three spheres of government. However, only 3 percent of respondents disagreed with the statement reasoning that it is not necessarily that there is a need to review the monitoring and evaluation strategy but the issue remains on what is being measured.

According to one senior official from the OCPO, the work on a proposed new public procurement will set out monitoring and evaluation framework in public procurement as a result the OCPO has identified more than 30 procurement related acts (such as State Tender Board Act) to be reviewed, repealed or amended in order to execute monitoring and evaluation.

Q 50: Establishment of a specialised National Bid Appeals Tribunal will enhance public sector procurement performance

Table 6.54

			Cumulative	Cumulative
Value	Count	Percent	Count	Percent
1	9	2.66	9	2.66
2	29	8.58	38	11.24
3	45	13.31	83	24.56
4	179	52.96	262	77.51
5	76	22.49	338	100.00
Total	338	100.00	338	100.00

Mean	4	Median	4	Mode	4
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Figure 6.54



According to Figure 6.54 above, a combined 75 percent of respondents agreed (53 percent) and others strongly agreed (22 percent) with the statement that suggests that public procurement performance will be improved by establishing a special National Bid Appeals Tribunal (NBAT). As per qualitative data respondents, indicated that bid appeals tribunal is the brainchild of the KwaZulu-Natal Provincial Treasury and has since been very effective. Therefore, it should be rolled out nationally as soon as possible. An appeals tribunal can reduce the turnaround time to resolve disputed cases, and reduce the cost of litigation. Furthermore, the tribunal must be given powers such as those of Chapter 9 institutions and must be able to fast track service delivery and not frustrate public procurement processes.

However, 9 percent of respondents disagreed with the statement indicating that having appeals tribunal may delay and frustrate the procurement process, in that sometimes might lead to a situation where bid committees not agreeing with the appeals tribunal decisions. Therefore, capacitation of procurement units in provincial treasuries, provincial departments, municipalities and public entities will reduce the number of cases that will require the attention of the appeals tribunal.

Q 51: Role of Public Protector in monitoring and evaluation will improve public sector procurement performance

Table 6.55

			Cumulative		Cumulative
Value	Count	Percent	Count	Percent	
1	7	2.07	7	2.07	
2	32	9.47	39	11.54	
3	33	9.76	72	21.30	
4	168	49.70	240	71.01	
5	98	28.99	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	4

Figure 6.55



As per Figure 6.55 above, a combined total 79 percent of respondents agreed (50 percent) and others strongly agreed (29 percent) with the statement which suggests that public procurement performance will be improved by intensifying the role of Public Protector. In support of the statement there were views such as, “only if the Public Protector is not afraid of politicians but remains independent like what Adv. Thuli Madonsela did during her tenure”, one qualitative respondent added. Furthermore, the Public Protector’s Office needs more capacitation and be given more powers and its findings must be binding unless reviewed by court of law.

However, there were differing views such as, 10 percent of respondents disagreed with the statement indicating from qualitative data collected that the role of the Public Protector’s Office is much broader than public procurement and service delivery. This office also is a reactive approach, dealing with detected fraud and corruption not preventing it. Furthermore, the office takes too long to resolve issues because it mainly use majority of its resources on high profile cases and giving poor feedback on other general public cases. However, it has an important influence to enhance good governance in the public sector as a whole.

One OCPO official interviewed suggested that it would be preferable for law enforcement and constitutional bodies to cooperate and collaborate in supporting the role of Public Protector with the procurement regulator, such as OCPO, which is a custodian of public procurement processes and prescripts. “Public protector, NPA, Hawks, SCOPA must act decisively to enforce laws, the law enforcement so far are doing better, although sometimes disturbed by political interference”, one senior OCPO official added. However, currently there is no collaboration between the law enforcement constitutional bodies as they all act disjointedly.

Q 52: Role of OCPO in monitoring and evaluation will improve public sector procurement performance

Table 6.56

Value	Count	Cumulative		Count	Percent
		Percent	Count		
1	2	0.59	2	0.59	
2	13	3.85	15	4.44	
3	28	8.28	43	12.72	
4	198	58.58	241	71.30	
5	97	28.70	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	4

Figure 6.56

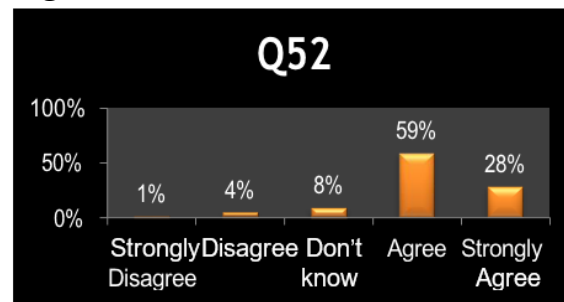


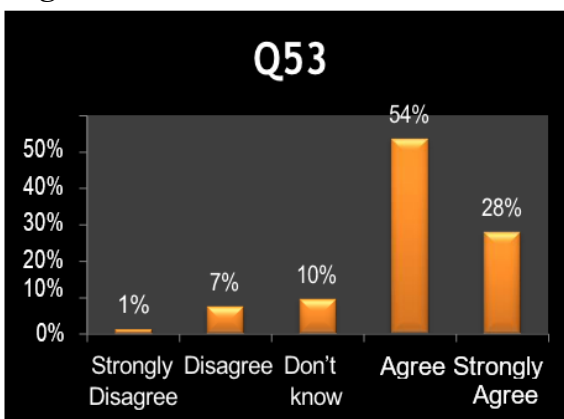
Figure 6.56 indicates that a combined total 87 percent of respondents agreed (59 percent) and a furthermore strongly agreed (28 percent) with the statement that suggests that the role of the OCPO in monitoring and evaluation will improve public sector procurement performance. From the qualitative respondents, they indicated that the monitoring and evaluation role of the OCPO would contribute to the strengthening of controls and create more efficient systems and processes across all spheres of government. However, OCPO does not have direct enough influence to improve public sector procurement significantly alone. However, 4 percent of respondents disagreed indicating that the OCPO does not give enough support to both AGSA and public institutions on substance over ambiguities of public procurement legislation interpretations that exist; hence, public institutions can follow the same procurement processes and still get a different finding from AGSA.

Q 53: Role of AGSA in monitoring and evaluation will improve public sector procurement performance

Table 6.57

Value	Count	Cumulative		Count	Percent
		Percent	Count		
1	4	1.18	4	1.18	
2	26	7.69	30	8.88	
3	32	9.47	62	18.34	
4	179	52.96	241	71.30	
5	97	28.70	338	100.00	
Total	338	100.00	338	100.00	
Mean	4	Median	4	Mode	4

Figure 6.57



As illustrated by Figure 6.57 above, a combined 82 percent of respondents agreed (54 percent) and others strongly agreed (28 percent) with the statement that suggest that the role of AGSA in monitoring and evaluation will improve public sector procurement performance. Some respondents from qualitative data in support of the above statement indicated that the AGSA remains one of the key controls in detecting irregularities in public procurement and performance issues, but once again, prevention measures remain limited. Therefore, for the AGSA to improve performance, the processes must be simplified, standardised and where

possible centralised and be given Chapter 9 institution powers as a Public Protector's Office to issue binding remedial actions.

However, 7 percent disagreed with the statement and cited reasons such as, the AGSA always enter the scene and verify after the fact, therefore always reactive. For AGSA to improve the public sector procurement performance, it will require amendment to its standards that will empower it to continuously monitor and evaluate procurement processes. In addition, specialised public procurement auditors not by general auditors must oversee this continuous monitoring process as it is done currently.

6.5 Summary

During the discussions in this chapter, an empirical survey of determining whether the public procurement legislation and its implementation have any inverse impact on accelerating service delivery in South Africa was conducted. The process was made possible with the aid of quantitative and qualitative data analysis methods. Study participants ranged from chief directors all the way to practitioners employed in public procurement units of various government institutions. The results of the survey were interpreted against the background of the main hypothesis which suggested that *"There are negative relationships between service delivery and public procurement legislation."* as explained in Chapter 1, which was the main reason inspired the researcher to undertake the study.

The findings of the empirical survey from all categories of respondents indicated that in some instances public procurement legislation and its implementation have negative impact on accelerating service delivery in South Africa. It was also noted that fragmentation of public procurement legislation delays service delivery because there is lack of legislative central accountability to monitor procurement performance therefore accelerate service delivery. Service delivery delays are sometimes due non-existence of best procurement practices and procedures developed and shared across all government institutions. Therefore, public procurement practitioners get confused to which legislative requirements and procedures are applicable, especially when different procuring entities require different policy measures.

The above assertion was supported by a combined 79 percent of the respondents who concurred that there is a fragmentation of public sector procurement legislation in South Africa. Furthermore, the above high percentages were supported by qualitative respondents' reasons such as; some of the prescripts are issued without consultation with public procurement specialists or practitioners in national, provincial departments, public institutions and municipalities. There was an assertion that National Treasury is continuously issuing instructions and circulars to provide further guidance, which sometimes further causes more confusion. It was also indicated that public procurement legislation is fragmented and that is due to subdivided legislation into specialised fields without a common overarching legal framework, example cited was CIDB, NHBRC, Correctional Services Act (which requires government institutions to procure school furniture from products produced by inmates), while PFMA does not allow this practice. Differing views from senior OCPO officials indicated that service delivery delays are not always due to fragmented legislation, but sometimes it is caused by poor procurement planning. A common reason given by

respondents was that different decisions are taken in different places and levels (bureaucracy in government structures).

Furthermore, 89 percent of respondents indicated that there is an element of political interference in public procurement, which causes an increase in fraud and then delayed service delivery. One of the OCPO senior officials indicated that undue political pressures could lead to non-compliance to public procurement prescripts, and then delayed service delivery. However, a dissenting view was notable again amongst the OCPO officials, where one official indicated that sometimes non-compliance to public procurement legislation is due to deliberate manipulation of public procurement prescripts.

A combined total of 98 percent of respondents agreed that corruption delays service delivery, because if suppliers are awarded contracts based on other criteria rather than past experience and price, the chances of getting sub-standard quality are high. It becomes a worse scenario if a premium was paid, depleting the very limited government resources and therefore unable to meet service delivery targets and expectations. It was also noted that gaps in public procurement legislation processes sometimes promote corruption, a total 81 percent of respondents agreed to this statement. Some reasons were given for this strong sentiment such as, for example, the MFMA Municipal SCM Regulation 32 has been misused in municipal procurement processes. Therefore, gaps in the legislation should be attended to as soon as they are discovered not waiting for a very long time while the gap is being used for corrupt activities as the National Treasury is not fast enough on identifying and fixing the gaps.

As stated by the OCPO official on an interview, “BBBEEA is not another form of public sector procurement discrimination because there is a constitutional requirement to achieve equity in South Africa, due to the past discriminatory governance system of apartheid.” Therefore, there should be a reversal of the past discrimination through preferential legislation and policies to remedy the situation towards equality, as required by the Constitution section 217 (2) and (3) on procurement. Furthermore, OCPO senior officials stated that there is a wide spread public perception that 20 and 10 points allocated for BBBEE preferences are too little to achieve socio-economic objectives of government in redressing the imbalances of the past. In addition, historically privileged businesses still obtain government contracts based on the 80 and 90 points for price only, as these companies have the required operational infrastructure and financial strength to compete on lowest bid prices.

It was also noted that public procurement performance will be improved by establishing a special National Bid Appeals Tribunal (operated regionally), a combined 75 percent of respondents concurred. Therefore, the bid appeals tribunal should be rolled out nationally as soon as possible, as appeals tribunal can reduce the turnaround time to resolve procurement disputes, and reduce the cost of litigation to both government and service providers. Furthermore, the tribunal must be given powers such as those of Chapter 9 institutions in order to fast track service delivery. A combined 82 percent of respondents agreed that the role of AGSA in monitoring and evaluation would improve public sector procurement performance and therefore service delivery. However, for AGSA to improve performance it must act proactively not reactively and the audit processes must be simplified, standardised and be done by specialised public procurement auditors not by general auditors.

Public procurement legislation sometimes is rigid and complex to achieve the conducive local conditions for job creation as government institutions are not allowed to apply set-aside procurement opportunities for specific geographical location of bidders. Some best practices from private sector procurement is that private sector is running continuous improvements of their procurement processes which creates new systems and techniques, however the same is not embraced by government because there is a government culture of not embracing innovation and change. A combined total of 81 percent of respondents agreed that there are lessons to be learned by public sector procurement practitioners from private sector counterparts. However, public procurement would need to be elevated up as a strategic function and be treated as a core part of strategic management processes in government institutions. Possibly through a legislated positioning of a Chief Procurement Officer to report directly to the accounting officer, with the required experience and professionalism criteria for appointment.

6.6 Deductions

From the responses received through the survey and the subsequent data analysis and interpretations from qualitative respondents and senior OCPO officials, it was clear that the public procurement legislation and its implementation have some negative impact on accelerating service delivery in South Africa. In this regard, the above findings supported and proved the hypothesis mentioned in Chapter 1 (Section 1.7) of this dissertation, which stated that *“There are negative relationships between service delivery and public procurement legislation.”* Loosely translated hypothesis further stated that *“The higher the rigidity of South African procurement legislation, the higher the level of poor service delivery.”* Although some respondents have suggested that the OCPO does not consider recent court judgments when issuing practice notes on public sector procurement, this study did not find any empirical and scientific evidence to support such notion with a combined total of 52 percent of respondents disagreeing with such statement.

With the above findings and analysis in mind, the following Chapter 7 will revisit the research questions posed in Chapter 1 and further present key contributions to public procurement body of knowledge through four interrelated phases of theoretical contributions, methodological contributions, practical contributions and a development of a *Procurement practices versus service delivery normative model*.

CHAPTER 7

FOUR PHASES OF CONTRIBUTION TO PUBLIC PROCUREMENT BODY OF KNOWLEDGE

7.1 Introduction

This chapter act as a build-up for the recommendations presented in the following Chapter 8. As alluded in previous chapters, the central focal point of the study was to contribute towards getting answers on whether or not some of public procurement legislation and its implementation has a negative impact on service delivery. Therefore, the study adopted a strategy to undertake document reviews, qualitative and quantitative surveys and literature review relating to public procurement in addition to three African countries case studies conducted.

It is in the above context that this chapter will start with the dissertation's background of contribution to public procurement body of knowledge in four unique phases. Firstly, in Phase one the chapter will analyse each chapter's contribution towards answering the research questions proposed in Chapter 1. Secondly, Phase two will outline the theoretical contributions, where literature reviews and case studies conducted will be analysed and deductions briefly outlined. Phase two will also prove that independent variables (public procurement legislation, processes, fraud and corruption) are the cause for dependent variable (service delivery) to be decelerated thereby approving the study hypothesis. Thirdly, in Phase three the chapter will also reflect on specially articulated methodological contributions which were used to conduct the study in terms of research methodology innovations and special packaging of research instruments. Lastly, Phase four will present the study practical contributions to the body of knowledge, by proposing a conjectural *Procurement practices versus service delivery normative model* to be adopted by National Treasury to avoid legislative hindrances towards accelerated service delivery. The chapter will conclude by revisiting the research questions as formulated in Chapter 1 in seeking for possible answers from the study.

7.2 Background of the contribution to body of knowledge

In South Africa, it is argued that the number of government departments, entities and municipalities having funds carried over annually has increased, which means that the procuring entities did not spend all of their allocated funds during the grant period. Therefore, on an annual basis these government departments return grant funding to National Treasury. In most cases, the underspending results in poor service delivery which sparks violent service delivery protests across South Africa as discussed in Chapter 2 of this dissertation. Such cases have been reported in North-West, KwaZulu-Natal, Gauteng and Eastern Cape provincial governments. Under-expenditure is normally caused by rigid public procurement processes, mainly the legislation. In some instances, when a department such as the Department of Human Settlements under-spends it is because it has to adhere to CIDB procurement prescripts which stipulate that should there be a cancellation of any construction related tender it can only be re-advertised after six months. While these government institutions adhere to

the currently scattered public procurement prescripts, there are always legal appeals lodged by the aggrieved bidders, which further delays service delivery thereby causing under-expenditure and funds rollover.

7.3 Four phases of contribution to public procurement body of knowledge

The key contributions are discussed in four interrelated phases of theoretical contributions, methodology contributions, practical contributions and development of a model or framework to be adopted by National Treasury.

As stated in previous chapters, the study critically analysed the root causes of service delivery delays in South Africa that relate to public procurement legislation. Therefore, to help unpack the main contribution to the public procurement body of knowledge, the researcher starts with the theoretical contributions Phase one below, subsequently followed by three other phases.

7.3.1 Theoretical contributions

Chapter review analysis is used to unpack the theoretical contributions to the body of knowledge. As outlined in Chapter 1, the basis for the research was to answer a critical question that to date has never been asked in detail and remains unanswered among public procurement scholars. The question is, “do public procurement prescripts and their implementation hinder the accelerated service delivery?”

Therefore, Chapter 1 introduced the topic under study and provided background to the study. It furthermore dealt with the problem statement, justification of the study, research questions, research objectives and the preliminary literature review in order to better understand the study in context. The chapter indicated that public procurement has always been regarded as a back office function for support purposes which was characterised by highly standardised administrative processes based on pre-determined procedures. However, it is argued that there have been some transformation and reform agendas adopted by the government of South Africa to revive the effectiveness of public procurement to enhance service delivery. Some previous studies revealed that there are undesirable and unethical conducts assumed to be more common in public procurement operations; which was proved by Chapter 6 results.

Chapter 2 reviewed the generic public sector procurement, provided the definition and background of generic public sector procurement. In Chapter 2, public sector procurement was generally defined as a process that involves hiring, purchasing or acquiring goods, services and construction through contractual means to render efficient service delivery. Where it was found that public sector procurement finds itself operating within a tight political system, which sometimes interfere with public procurement operations and transparency the relationship between public procurement and service delivery was thoroughly discussed, where service delivery definition was explored in different contexts and the researcher concluded that although definitions were given in different contexts but “community well-being” was at the centre stage of what service delivery is. The above relationship was supported by recent statistics on service delivery protests and AGSA audit outcomes over a

measured period. The most important take away in this segment was an emphasis on the fact that clean audits are meaningless if there is no service delivery improvement. The chapter also proposed new urgent public procurement reforms which covered the consolidation of the legislative framework that governs public procurement (which was supported by Chapter 6 of this study).

The chapter suggested professionalisation of public procurement workforce as an urgent reform with some specifics of e-government and e-procurement technologies embedded. Distinction was made between procurement and supply chain management; while public and private sector procurement were also differentiated. However, some similarities were also noted in that both private and public sectors have one mutual goal, which is to get value for money throughout the value chain process.

The researcher discovered that public sector does not perform supply chain management but only specialises in one element of supply chain management, the procurement. This was discovered when analysing both the private and public sector supply chain management. Leenders and Fearon (2004:10) argue that private sector procurement is a systematic process that facilitates the entire synergy between raw materials, services and information as from the R&D stage through to the end consumer receiving the end product. However, public sector normally does not do R&D it does not develop, manufacture and market products. It was due to these critical supply chain management elements that are not performed by public sector, therefore public sector only performs one or few of the supply chain management elements mainly procurement and a bit of logistics to selected government institutions. Therefore, it is the researcher's strong view and contribution to the body of knowledge that no single organisation performs the entire supply chain management at once, each organisation specialises in one or few elements of supply chain management, for example Imperial logistics specialises on logistics which is one element of the "chain".

Chapter 2 also discussed approaches on how government procurement operations can learn from some private sector good practices, in that communication between government institutions and suppliers is very limited and unsatisfactory due to some procurement prescripts. Further to that, public sector procurement was found to be inflexible and have unnecessary restrictions that are imposed to service providers not to suggest or propose alternative and innovative products. Types of corruption in public procurement with its effects on service delivery was discussed coupled with some measures to combat it, the researcher introduced the rule of law principles and good governance with its three key role players as new measures to curb public procurement corruption.

South Africa does not have a public procurement Act of parliament which is supposed to specifically deal with public procurement operations. South Africa has not adopted e-government and e-procurement technologies in public procurement. Furthermore, South Africa does not have an independent and impartial public procurement regulator. Therefore, the above researcher's observations compelled the commissioning of case studies on three African countries (Kenya, Zambia and Zimbabwe) because these three countries already have operational public procurement acts, they have already adopted public procurement modernisation and they also have operational public procurement regulators, yet South Africa

does not have any of the three most important aspects of public procurement. These three case studies examined the significance of reforms, accountability and transparency in public procurement towards ensuring effective government procurement and value for money.

The three African countries' case studies revealed the three main lessons, the first one was for South Africa to learn how these three countries managed to enact and implement specialised public procurement acts many years ago. The second lesson was to learn how did these three countries managed to promulgate and implement e-government and e-procurement technology policies and maybe they can help South Africa to improve its central suppliers' database to a fully functional e-government and e-procurement technologies. The third lesson was also to learn how to establish the procurement regulator, to independently and impartially oversee South African public procurement.

The literature review presented in Chapter 3 set out to examine the legislative environment governing public procurement and the provision of public infrastructural works, services and goods in South Africa. The chapter also investigated the main reasons for service delivery delays, as well as the underpinning reasons. It was discussed that public procurement begins with s217 of the South African Constitution which gives life to the rest of other legislation relating to public procurement operations, where the researcher categorised for the first time the other legislations as foundational and non-foundational. To this end, public procurement is regarded as a significant element of service delivery and has been used as policy to correct the inequalities and discriminations of the past political dispensation and pre-democratic governments. The chapter outlined seven elements of public sector "supply chain management" model and also emphasised the importance of contract management and its critical processes in service delivery. The researcher also discovered that the last two elements of performance and risk management cut across the whole model. The chapter also outlined few challenges related to the model, in such that corruption, poor planning, a hostile political atmosphere, employee capacity, fraud and poor monitoring and evaluation of public procurement were discussed as challenges. The research revealed further challenges relating to non-uniformity of public procurement ICT systems as currently there is neither e-government nor e-procurement in South African public procurement.

The chapter also discussed at length the sampled court judgments relating to public procurement operations. In that, among the court cases analysed it was litigation resulting from an unlawful disqualification of bids, where the researcher recommended a review of the PPPFA and Regulations in order to make it crystal clear which reasons can warrant the disqualification of bidders. Furthermore, introduce the long-awaited public procurement act as the overarching act for public procurement operations. A court case relating to the usage of price estimates was analysed and an unambiguous instruction note should be issued by the National Treasury to prevent government institutions from using price estimates. Conditions on how and when unsolicited bids can be accepted by procuring entities needs to be outlined clearly as there was a court case analysis on this matter.

Chapter 4 explored specific procurement processes, methods and other procurement standards and norms that are used to provide service delivery in South Africa. The chapter looked at generic pre-procurement process requirements, where it discussed the importance

of needs analysis, demand management and budget allocations in conjunction with annual performance plans of each government institution. The researcher discovered that when demand management is implemented correctly, it forms an important part of various procurement processes that contribute towards attaining the planned strategic goals of any government institution. Correct implementation of demand management makes sure that goods, construction works and services are delivered correctly, as planned, with acceptable quality standards thereby satisfying the end-users (citizens). It was revealed that proper demand management ensures that funds needed to execute service delivery are available at the right time. Further discussions made it clear that the budget allocations should be linked to annual performance plans of every procuring entity.

There was also an outline of key public sector procurement processes, in that bid compilation processes, invitation of bids, receiving of bids, evaluation of bids, awarding of contracts and contract management were portrayed as core to any public procurement in South Africa. Various public procurement methods were discussed, such as strategic sourcing as a rare method used in government institutions except in SoEs, transversal contracting, infrastructure delivery and maintenance procurement, e-procurement (currently not applicable in South Africa) and green procurement which is also currently not endorsed by the National Treasury. Some recommendations were discovered by the researcher in that public procurement around the world is moving towards e-procurement and green procurement therefore South Africa should also increase the pace on these two key public procurement reforms.

In Chapter 5, the researcher discussed in detail the problem statement and its background, coupled with the study objectives and hypotheses, the dependent and independent variables. Literature from chapters 2, 3 and 4 supported the dependency of accelerated service delivery on three independent variables which are public procurement legislation, processes and fraud and corruption. Furthermore, Chapter 6 results proved the study hypothesis as stated in chapters 1 and 5. The chapter also discussed research design, research instruments, sampling procedures, data collection and analysis, ethical considerations, research reliability and validity and the study trustworthiness. The researcher discovered new benefits of using tripartite data collection methods of document reviews, interviews and questionnaires; the researcher chose these methods to compliment the three case studies conducted in three African countries in order to gain rich insights into the full view of public procurement processes.

To minimise any omissions and errors, the researcher conducted a pilot study to determine whether the research instruments such as interview guides and questionnaires are well written and not confusing for respondents as suggested by Corman and Lussier (2001:11). The researcher opted to apply a hybrid research method (quantitative and qualitative) for the purposes of pragmatism, the researcher was motivated by the apparent shortcomings of the quantitative method when used alone to address complicated research such as public sector service delivery mechanisms, as well as other strategic government priorities. The two methods were given equal status when combined. They were combined to check whether there was a correlation when addressing different aspects of the main research question and developing the qualitative component that facilitates sampling for the quantitative component as recommended by Cavana, Delahaye and Sekaran (2000).

Chapter 6 presented results that emerged from the empirical study, analysed and interpreted the public procurement norms, standards and practices in conjunction with the current South African public procurement legislation. The research has therefore broadly shed some light on the nature, causes and underpinning reasons behind service delivery delays due to public sector procurement legislation. Subsequent to the analysis of relevant literature, questionnaire and interviews responses, a number of findings became apparent, as they are presented in summary below.

From the responses received through the survey, document reviews and the subsequent data analysis and interpretations from qualitative respondents and senior OCPO officials, it was clear that the public procurement legislation and its implementation have some negative impacts on accelerating service delivery in South Africa. In this regard, the Chapter 6 findings supported and approved the hypothesis presented in Chapter 1 (Section 1.7) of this dissertation, which stated that,

- “There are negative relationships between service delivery and public procurement legislation.
- There are negative relationships between public sector procurement methods, processes and service delivery.
- There are negative relationships between public sector procurement fraud, corruption and service delivery.”

Loosely translated the hypothesis further stated that “The higher the rigidity of South African procurement legislation and processes, the higher the level of poor service delivery”. In support of the hypothesis above, the research revealed that the fragmentation of public procurement legislation delays service delivery because there is no central legislative accountability to monitor procurement performance (79 percent of Chapter 6 respondents agreed). Qualitative respondents also concurred with the reasons such as “some of the prescripts are issued without consultation with public procurement specialists or practitioners in national and provincial departments, public institutions and municipalities”. The study also discovered that service delivery delays are sometimes because the best procurement practices and procedures are not developed and shared across all government institutions. However, a different view from senior OCPO officials indicated that service delivery delays are not always due to fragmented legislation, but sometimes due to poor procurement planning, non-compliance and deliberate manipulation of public procurement prescripts. A common reason given by respondents was that “different decisions are taken in different places and levels amounting to unnecessary government bureaucracy.” The study revealed that there is an element of political interference in public procurement which sometimes delays service delivery (89 percent of respondents agreed). All of the above assertions fully support the research hypothesis.

Furthermore, in support of the hypothesis above, it became evident that delayed service delivery is caused by, among other things, fraud, corruption and political pressures, 89 percent of the respondents agreed. Some service delivery delays are also caused by BBBEE suppliers supplying shoddy work. Further, poor strategic sourcing in government institutions due to some legislation caused service delivery delays. Too much compliance for clean audits while

neglecting quality and speedily service delivery was also noted as a cause. Further, public procurement practitioners are not professionalised and there is no segregation of duties in public procurement which create room for collusion with suppliers.

The above causes were underpinned by factors such as fragmented public procurement legislation, rigid public procurement legislation, poor training of public procurement practitioners and the non-existence of a public procurement risk management strategy. Poor communication by OCPO to public procurement practitioners, court judgments relating to public procurement not analysed, non-functional professional bodies in public procurement and the supply chain in general are cause for concern. Furthermore, poor strategies to curb fronting and bid rigging practices are also a huge problem in public procurement. Although some strong perceptions have suggested that the OCPO does not consider recent court judgments when issuing public procurement regulations and instruction notes on public sector procurement, this study could not find any substantial scientific evidence to support such a notion with a combined 52 percent respondents disagreeing with such notion.

Chapter 7 presented key contributions to the body of knowledge on public procurement, they are discussed in four interrelated phases of theoretical contributions, methodological contributions, practical contributions and a development of a model or framework to be adopted by National Treasury. The model was informed by the causes of delayed service delivery that emerged from the empirical study and literature review.

Chapter 8 presented some of the critical recommendations of the study, which are proposed in response to the challenges identified by the researcher relating causes of service delivery delays due to public procurement legislation and its implementation. After a rigorous probe, findings and analysis of the study, Chapter 8 presented the summary of critical recommendations which were, among other recommendations the consolidation of public sector procurement legislation. The establishment of a National Bids Appeals Tribunal (NBAT) to serve independently and is recommended to receive, hear and decide on grievances against the award of any bids by any government institution. This process might require some legislation to be enacted and some reviewed, possibly the Public Finance Management Act, among others. The National Treasury should create a balance between ensuring that compliance with public sector procurement prescripts does not delay or hinder service delivery, because clean audits are meaningless without accelerated service delivery. National Treasury should ensure public procurement is professionalised by ensuring collaboration and co-ordination between industries (through their professional bodies), academia and government to bridge the gap between industry realities and academic expectations towards improved service delivery.

National Treasury should provide for an effective risk management framework and establish guidelines for public procurement to implement immediately. In order to ensure risks are identified on a case by case basis in each procurement initiative, thereby allocating different risks to the parties who can best manage it. There should be an establishment of a quarterly National Public Procurement Forum (NPPF) to have fair representation from national, provincial, local governments and all other government institutions. NPPF will ensure identification of common problems and possible steps in an attempt to solve these problems

and to establish a standardised public procurement approach for South Africa. Furthermore, there should be an establishment of an Annual Public Procurement Conference (APPC) in order to identify new and improved practices and workable solutions that could assist public procurement practitioners in performing their job efficiently and effectively. Furthermore, qualifications must be developed to provide graduates with the knowledge and specific skills in public procurement and applied competence in the fields associated with public financial management. The National Treasury must establish a unit under the OCPO that will focus on the analysis of court judgments that have implications for public procurement and advise lawmakers in terms of necessary amendments to public procurement prescripts. The South African government ought to urgently establish through the act of parliament a procurement regulator, to independently and impartially oversee public procurement in South Africa.

7.3.2 Methodological contributions

Research design and methodological contributions were presented in Chapter 5, where the researcher discussed in detail the research methodologies applied in this research. The researcher discovered new benefits of using tripartite data collection methods of interviews, questionnaires and document reviews; the researcher choose these methods in order to compliment the three theoretical case studies conducted in three African countries to obtain rich insights into the full view of public procurement processes.

The researcher opted to apply a hybrid research method (quantitative and qualitative) for the purposes of thoroughness, the researcher was motivated by the apparent shortcomings of the quantitative method when used alone to address complicated research such as public sector service delivery mechanisms, as well as other strategic government priorities. The two methods were given equal status when in use. They were combined to check whether there was a correlation when addressing different aspects of the main research question and developing the qualitative component that facilitates sampling for the quantitative component. To minimise any omissions and errors, the researcher conducted a pilot study to determine whether the research instruments utilised such as interview guides and questionnaires are well written and not confusing for respondents as suggested by Corman and Lussier (2001:11).

The researcher discussed in detail the problem statement and its background, coupled with the study objectives and hypotheses, and the dependent and independent variables. Where literature in chapters 2, 3 and 4 proved the dependency of accelerated service delivery on three independent variables, which are: public procurement legislation, processes and fraud and corruption. Furthermore, Chapter 6's results analysis proved the study hypothesis as stated in chapters 1 and 5. The chapter also discussed research design, research instruments, sampling procedures, data collection and analysis, ethical considerations, research reliability and validity and the trustworthiness of the study.

7.3.3 Practical contributions

One of the core practical contributions of this study is a detailed rich insight presented by the three African countries' case studies conducted. South Africa does not have a public procurement Act of parliament which specifically deals with public procurement. South Africa

has not adopted e-government and e-procurement technologies in public procurement and the fact that South Africa does not have an independent and impartial public procurement regulator triggered the researcher. Therefore, the above researcher's observations compelled the commissioning of case studies on three African countries (Kenya, Zambia and Zimbabwe) because these three countries already have operational public procurement Acts, they have already adopted public procurement modernisation and they also have operational public procurement regulators, yet South Africa does not have any of the three most important aspects of public procurement. These three case studies examined the significance of reforms, accountability and transparency in public procurement towards ensuring government procurement yields value for money.

The three African countries' case studies revealed three main lessons learned, the first one was for South Africa to learn how did these three countries managed to enact and implement specialised public procurement acts many years ago. The second lesson was to learn how did these three countries managed to promulgate and implement e-government and e-procurement technology policies and maybe they can help South Africa to improve its central suppliers' database to be fully functional e-government and e-procurement system. The third lesson was also to learn how to establish a public procurement regulator, to independently and impartially oversee public procurement in South Africa.

7.3.4 Contributions through the development of a normative model

7.3.4.1 *Background to the normative models in governments*

The South African public sector procurement was modelled from countries such as Canada; therefore, this proves that models can play a pivotal role in service delivery as they simplify and explain the main and key indications. The model to be developed for the study is based on the rationality of a *normative model*. Whereby normative models depict the form of a physical prototype, or a symbolic representation, which provides an illustration, which then brings about important structures of some events or objects in the real life situation (Bennett, 2010).

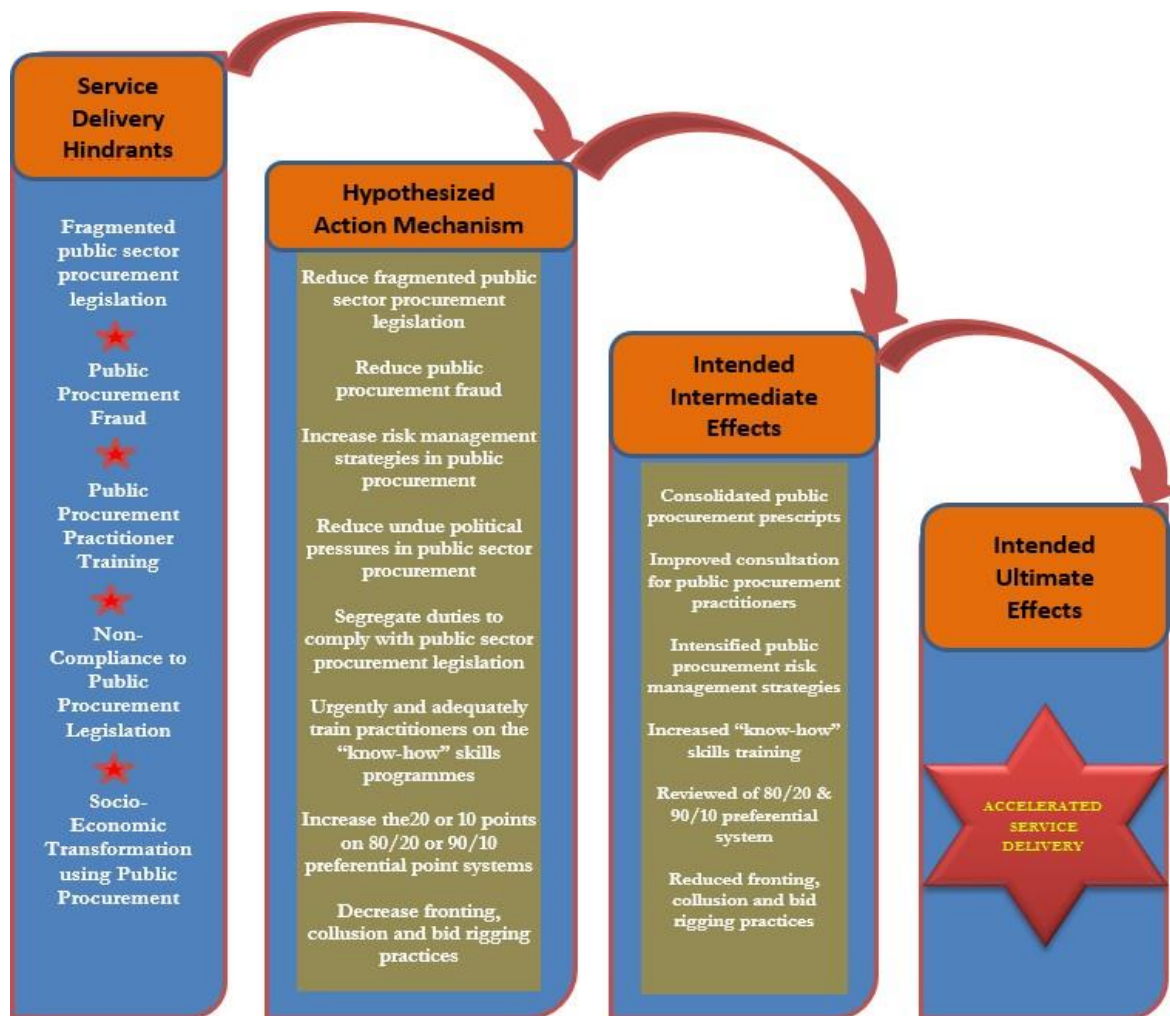
As alluded to by Kolkman, Camp, Balke-Visser and Gilbert (2016), a contribution to the evidence base can be executed through a series of models; therefore, illustrations are evident in the models used in Treasury Department of the United Kingdom. As per the United Kingdom Treasury, there are several types of model, which are related to the purposes the models are designed and used for, such as: 1) procurement and commercial; 2) planning models of formulating actions based on forecasts; 3) financial planning and impact analysis; 4) financial liability and future costs planning; 5) evaluation of value for money (service delivery) and contracts awarding; 6) focusing on natural systems forecast models; 7) fund allocation models across all government institutions. Therefore, for the purposes of this study, the UK Treasury's number model 5 fits very well and can be used in South Africa to model the service delivery acceleration in the form of developing the model below.

7.3.4.2 *Procurement practices versus service delivery normative model*

The below model (Figure 7.1) was initially presented in the training environment by Bennett

(2010). However, combined with other models' extracts, the below model's process flow caught the attention of the researcher who eventually revised it to suit the process to be followed to effect the South African public procurement reforms. Figure 7.1 below outlines the *Procurement practices versus service delivery normative model* graphically and its implications in trying to resolve challenges imposed by public procurement practices on South African service delivery initiatives.

Figure 7.1 Procurement practices versus service delivery normative model



Source: Revised from Bennett (2010)

As depicted in Figure 7.1 above, the *Procurement practices versus service delivery normative model* was developed in order to address the critical matter of disjuncture between procurement practices and service delivery. It depicts the first pillar of service delivery components which, according to the Chapter 6 results analysis, are a major cause of decelerated service delivery. These service delivery components must be linked to hypothetical action mechanisms, which then must be linked to the intended immediate effects and lastly linked to the intended ultimate effects, which is an accelerated service delivery.

Accordingly, based on the above figure it can be agreed that the above normative model can be used for universalisation of a more complex portent, and not the phenomenon itself. In the same context, the above normative model is the ideal model depicting a South African public sector procurement system and milestones that ought to, if certain outcomes or solutions were to be realised, to accelerate service delivery. In this study, therefore, the normative model refers to a system depicted as a framework for the development of an effective and efficient *Procurement versus service delivery normative model* for South Africa to be used during drafting and implementation of any public sector procurement prescripts to accelerate service delivery across the country.

7.3.4.3 *Service delivery hindrances and hypothesised action mechanism*

There are various obstacles to service delivery manifested from various public procurement legislation, practices and reforms, these will be discussed below.

a) Reduce fragmentation in public sector procurement legislation

It would be ideal to have less and less fragmented public sector procurement legislation in order to streamline all public procurement processes. Therefore, it is long overdue to start the process of consolidating the legislation governing public sector procurement in South Africa to make it easy to interpret thereby promoting easy implementation and eventually speed up service delivery, which is generally an ultimate goal of any government.

Some of the general disquieting concerns in public sector procurement are that the National Treasury periodically issues more and more practice notes and circulars without consulting with general public procurement practitioners in all three spheres of government; which causes further confusion when some practice notes are withdrawn soon after they are issued. Most worrying is the notion that there is significant duplication and overlap among different regulating instruments leading to ambiguity as to which piece of legislation to follow.

There are many inconsistencies in dealing and approaching with similar or related matters, some national and provincial procurement thresholds are set out in National Treasury practice instructions notes. However, at municipal level it is set out in regulations these kinds of inconsistencies cause anxiety and confusion among public procurement practitioners who operate at national and provincial sphere of government compared to those operating in local sphere of government. As a result, it causes an upset situation in terms of the transferability of public procurement practitioners, meaning that a local government public procurement practitioner cannot be easily transferred to other spheres of government, because rules of the game are not the same.

As fragmented as they are, some legislation is not communicated effectively and efficiently to public procurement practitioners in order to be understood properly. As a result, there are too many pieces of legislation, roughly estimated at over 80 which govern public procurement as a whole. Some are only applicable to local government, some are only applicable to national and provincial governments and some to all spheres of government which causes a lot of

confusion among the public procurement practitioners. Some public procurement practitioners use a mixture of legislation that is not applicable to their sphere of government as they cannot keep up with the scatteredness of the public procurement legislation. As a result, legislation becomes too ambiguous to interpret easily and is thus open to own interpretations and implementation.

In trying to increase the impact of public procurement on socio-economic transformation, the government is using BBEEA to appoint inexperienced service providers, confirmed by the Chapter 6 results analysis. In most instances, the appointed BBEE companies do not complete projects allocated to them on time and sometimes they deliver shoddy or poor workmanship in order to maximise profits while their financial management skills are in serious disarray. In most cases, BBEE service providers receive a tender award and start incurring unnecessary debts by buying luxurious cars and living an expensive haphazard lifestyle.

b) More reforms in some national performance, monitoring, evaluation and compliance institutions

Learning from experiences of the KwaZulu-Natal Bid Appeals Tribunal; there have been calls for the appeal systems to be rolled out nationally thereby establishing a specialised National Bid Appeals Tribunal (NBAT) which will be regionalised and will enhance public sector procurement performance and therefore accelerate the desperately needed service delivery. The NBAT can reduce the turnaround time to resolve disputed cases, and reduce the cost of litigation for both service providers and the state institutions; however, for the process to be legitimate the National Treasury will need to issue regulations to effect these innovations in the public procurement sector.

It would be ideal if the NBAT could be given the powers to issue binding remedial actions similar to those of Chapter 9 institutions and be able to fast-track service delivery and not stifle the public procurement process. When setting up the NBAT, attention should be paid to areas like a situation where bid committees or any procurement structures of any state institutions do not agree with the appeals tribunal's decisions.

The role played by the Office of the Public Protector in exposing maladministration and irregularities in public procurement should be strengthened; thus the Office of the Public Protector needs more capacitation and should be given clearer powers and its findings be binding unless reviewed by court of law. However, while strengthening the Office of the Public Protector to help in public procurement performance, special note should be taken that the Office of the Public Protector's mandate is way broader than public procurement and service delivery, the office is also reactive and deals with detected fraud and corruption and is not designed for prevention. In most cases, the response from the Office of the Public Protector is drawn out, as it takes too long to resolve issues because it is mainly using its resources on high profile investigations, therefore giving poor and substandard feedback on other general public investigations. However, it is an important influence for enhancing good governance in public procurement operation.

The AGSA remains one of the key controls in detecting irregularities in public procurement and performance issues, but once again prevention control measures remain limited, because the office is also reactive, not proactive, in its operations. In trying to strengthen the AGSA mandate in order to improve public procurement performance, the AGSA's audit processes must be simplified, standardised and where possible centralised and be given Chapter 9 institution powers, like the Office of the Public Protector, to issue binding remedial actions. For the office of AGSA to improve the public sector procurement performance, it will require an amendment in its standards and mandate, which will empower it to continuously monitor and evaluate procurement processes and this continuous process, must be done by specialised public procurement auditors, not by general auditors as it is done currently.

c) Reduce public procurement fraud

Every citizen of a country would like to see corruption decreasing, especially in government procurement, as corruption has a direct negative impact on the pace at which service delivery is accelerated to the citizens. However, public sector procurement officials can be trained in ethics and moral values but if they still wish to be corrupt, they can still choose to be corrupt therefore most officials are corrupt by choice, results confirmed by the Chapter 6 analysis.

Therefore, based on the above, strong risk management measures need to be strengthened in public procurement to prevent and combat fraud. Without strong risk management measures, the fraud floodgates will be wide open for looting of public resources. When risk management measures and various checks and balances are properly executed it becomes key to identifying potential fraud risks, and ensuring that controls are in place to detect fraud and curb it before significant looting take place in public sector institutions.

There are several gaps in the legislation, gaps which should be closed as soon as they become visible, the government should not wait for a long time while the gap is being used for corrupt activities. An example of Regulation 32 of the MFMA Municipal SCM Regulations and contract piggybacking are always mentioned as an exploitable gap in the local sphere of government procurement legislation, but until now, no action has been taken by the National Treasury to stop the abuse and resultant fraud. If changing the legislation might be too complicated, where sections of legislation seem too technical, there are regulations and practice notes that must be used to give further guidance and interpretations – although sometimes they can also bring more confusion than clarity.

d) Improve compliance to public procurement legislation

In most cases, public procurement practitioners recognise some public procurement political interference; however, due to political pressures and the prominence of politicians, some public procurement practitioners feel compelled not to comply with procedures and prescripts for fear that they might lose their jobs and, even worse, fear for their lives too. It is for these reasons that public procurement practitioners thoroughly recognise the need to segregate duties in order to improve compliance, reduce fraud and improve efficiency in public procurement operations. However, many government departments and municipalities may

not prioritise the filling of vacancies in procurement units in their respective organisations, which then makes it difficult to implement an effective segregation of duties in public procurement. Furthermore, sometimes public procurement practitioners find ways to circumvent the system and still commit fraud and corruption; it feeds back to the individuals' principles of ethics and morals.

e) Improve public procurement practitioner training on processes

Public procurement practitioners mostly prefer the “know-how” for public procurement training; public procurement practitioners prefer the skills programme that teaches them how to actually do the job rather than formal theoretical and academic training. However, until accredited or formal training is included as a mandatory qualification and set as a minimum entry requirement for senior positions in public procurement the “know-how” training programmes will always be favoured; training will prove to be an incomplete process towards full qualification and accreditation. As it stands, some public procurement practitioners have never accessed any training on public sector procurement legislation or processes, they just learned public procurement along the way at work. This indicates that the OCPO, as the custodian of public procurement needs to intensify the training offered to public procurement practitioners. Lack of training for public procurement practitioners is not a good reflection on the sector, especially when the sector is receiving many qualified audit opinions around the country.

There are lot of lessons that the public procurement practitioners can learn from their private sector counterparts; due to the fact that private sector organisations are running continuous improvements on their processes, which creates new systems and techniques for better procurement operations. However, private companies work and procure on a completely different level of legislative compliance and have much more freedom to manoeuvre, for example, in the private sector negotiations plays a huge role and in contrast, negotiating is discouraged in government as it is seen as making room for more bribes and corruption. It is because of corruption and fraud in the public sector that the free and easy procurement processes have been taken away to ensure fair government procurement processes in a much more highly regulated environment.

f) Improve socio-economic transformation using public procurement

There is no doubt about the government agenda with regard to accelerating radical socio-economic transformation in South Africa; however, balance must be maintained between radical socio-economic transformation and the quality of constructions works, goods and services the government purchases. For example; a previously disadvantaged supplier is allowed to price between 11.1 and 25 percent more than that of a previously advantaged supplier, therefore, this should create sufficient competitive advantage although sometimes they deliver poor quality products; because anything higher than this would lead to inefficiencies in the limited government expenditure.

According to the Chapter 6 results analysis, up until now the current 80/20 or 90/10 preferential system has made no significant change in empowering the previously

disadvantaged suppliers, as a result public procurement practitioners view this as just one of the rules that must be implemented. Even though the government has put thresholds on local production and local content; it is open to all South African suppliers not just previously disadvantaged persons. This rule has good intentions but the implementers have found loopholes to benefit themselves or the elites. However, the majority of the previously disadvantaged suppliers do not have the requisite capacity which results in fronting or bid rigging or unethical business behaviour by conglomerates in order to get business from government.

7.3.4.4 *Intended intermediate effects*

The paragraphs below will discuss some of the intended intermediate results to be achieved if the *Procurement practices versus service delivery normative model* is adopted.

a) Reduced fronting, collusion and bid rigging practices

There is a need for urgent strategies to combat fronting practices, because public procurement is generally susceptible to corruption. When government procures goods, services and works, there are many important processes that involve both private and public sector organisations, which opens the space for channelling public resources for private gains by both public and private organisations' representatives. There should be strict law enforcement processes, especially for competition laws, and furthermore public procurement practitioners should be well trained to improve procurement processes and detect bid rigging, cartels and collusion.

Public procurement practitioners should be thoroughly trained on how to detect bid rigging. Therefore, the Competition Commission of South Africa can assist public procurement institutions to detect bad trading practices during the early stages of the procurement process. High entry barriers, limited buyer power, market structures that are highly concentrated, very limited market competition, controlled demand and supply fluctuations, are all signs of an unhealthy competitive trade or bidding.

However, price fixing, bid rigging, cartels and other bad trading practices can be very sophisticated and thus hard to detect, sometimes because bad trading agreements and practices are usually reached in top-secret meetings. Secret as they are, signs of suspicious bad trading patterns may be observed during the bidding process where prices or bidding methodologies are sometimes close or the same. Therefore, constant monitoring of bidding patterns and practices is very important to detect these practices.

b) Improved risk management strategies in public procurement

It is because of the bad trading practices above that the National Treasury, as custodian of public procurement in South Africa, should start to intensify risk management strategies in public procurement. Risk management is a proactive action intended to assess, observe, avoid and justify (only to tolerable levels) all the negative factors that might hinder the achievement of government objectives of service delivery.

There are considerable risks around public procurement integrity in relation to the actual service delivery to the citizens. Inadequate needs assessments, procurement planning, proper budgeting and poor specifications drafting are some of the common mistakes and risks associated with the pre-bid processes. Further risks that mainly affect the pre-bidding processes are irregular or inadequate procurement strategies, incorrect procurement methods and sometimes the time allowed for bidders to compile and submit bidding documents is inconsistent. Therefore, failing to fix some of the above-mentioned risks and non-accountabilities, would cause South African public procurement to be severely compromised: which would ultimately impact on service delivery.

In trying to enforce risk management in public procurement, National Treasury should start providing an efficient and effective risk management framework and good guidelines specifically for public procurement, which will result in an a much-needed risk management strategy. The above processes would ensure that risks are identified on a case by case basis within each procurement initiative, thereby allocating different risks to the parties who can best manage them or accept the costs associated with those risks that could not be transferred. Post-bid processes, such as proper contract management, can assist in the management and transfer of risks, in most cases, public procurement units withdraw their involvement as soon as a bid award is concluded and the South African public procurement sector still lacks contract management specialists.

c) Reduced gaps in public procurement legislation

In dealing with the intended intermediate effects on South African public sector procurement, one should acknowledge that gaps and fragmentation of public procurement prescripts lead to corruption as confirmed in the results analysis in Chapter 6. Ibietan and Ndukwe (2014) indicated that, worldwide, corruption is widespread among public servants to whom public funds are entrusted to deliver services to communities. The notion of the rampant misappropriation of resources is a very worrying factor in South Africa. Respondents in Chapter 6 were concerned about corruption, where a combined 81 percent of respondents agreed that gaps in legislation lead to corruption.

Having consolidated public sector procurement prescripts will ensure coordinated and systematic public procurement, which in turn, according to the Chapter 6 results analysis, will accelerate service delivery and avoid a range of fraud and corruption in government institutions. Departments like Human Settlements in various provinces would cease to return funds or grants ring-fenced for RDP (Reconstruction and Development Programme) houses back to the National Treasury due to underspending. Among the reasons cited by the qualitative data respondents was legislation, which prohibits them from re-advertising any construction-related tenders within six months after cancellation of the first advertisement. Furthermore, in most cases cancellation is due to aggrieved service providers lodging appeals, often vexatious, frivolous or without merit, which compel the concerned government institution to stop the service delivery process and attend to the aggrieved service providers. When these appeals are taken to court, the processes usually take around 12 months to reach a settlement. The time for the tender to proceed has lapsed and the funds are unspent and have to be returned to the National Treasury and no service delivery happens.

d) Establish a public procurement dispute resolution mechanism

It is for the above reasons that South Africa has an urgent need to establish the independent National Bids Appeals Tribunal (NBAT), where an appeal would mean registering a formal grievance against the awarded bids by any government institution usually brought by a service provider or an appellant. Therefore, the purpose of the NBAT would be to receive, hear and decide on appeals against the award of bids by any government institution. The NBAT would be established to help restore the integrity of the government procurement system through creating a transparent, speedy and accessible mechanism for resolving grievances arising from the awarding of bids. To avoid service delivery delays the NBAT will need to ensure that its procedures are effective, efficient and quick. An order issued by NBAT must have legal force and be enforced as if it was issued in civil proceedings in a division of a court or in a Chapter 9 institution. Therefore, the process might require some legislation to be enacted and some to be reviewed to give effect to the establishment of NBAT, such legislation might be the Public Finance Management Act or the forthcoming Procurement Bill among others.

There is an urgent need for some improvements in consultation with public procurement practitioners and all other stakeholders from all three spheres of government by National Treasury when drafting public sector procurement legislation. There has been an outcry by public procurement practitioners and other relevant stakeholders that the National Treasury does not consult with them when drafting and issuing any public procurement prescripts. These practices can cause a lot of confusion and even mayhem because sometimes the issued prescripts get withdrawn, partially or wholly, within a very short time (as few as five days). Therefore, it is thought that the National Treasury should urgently start to take the consultation process seriously before issuing any public procurement legislation or prescripts for implementation, so that all the confusions, uncertainties and ambiguities in public procurement can be avoided.

e) Increased skills development in public procurement

It is therefore acknowledged that skills shortage in emerging countries (such as South Africa) is still a key challenge (Nel, 2006). The environment in South Africa is aggravated by a lack of professional bodies for public procurement and the situation becomes worse because of lack of linkages between the government skills deficit and higher education sector offerings. Based on the skills mismatch, the South African government would not be able to meet its expected performance standards, which would negatively influence service delivery.

During the execution of service delivery processes, it is difficult to procure the services of the best bidder who provides quality and efficiency in service delivery as well as having strong enough financial and human resources to execute the job optimally. Therefore, the Chapter 6 results analysis confirmed that there should be an urgent increase in the “know-how” skills training programmes offered by the OCPO in order to close the skills gap. Otherwise, if skills development training programmes are not urgently offered, the result will be rampant maladministration, corruption, financial mismanagement and non-compliance with public procurement prescripts. Thus, the above situation would translate into substandard government performance and, ultimately, poor service delivery to the citizens.

f) Improved socio-economic transformation in public procurement

Another urgent intermediate action needed from the procurement system in South Africa is a review of the 80/20 and 90/10 preferential procurement system. The preferential procurement system in South Africa has loose or resistant rules; these rules are sometimes poorly enforced, therefore opening doors for abuse of the contract awarding processes through corruption. Especially where service providers produce fraudulent BBBEE certificates to claim the 20 or 10 preferential procurement points for the tender to be awarded to them. Furthermore, there have been complaints that the 20 or 10 preferential procurement points are not sufficient for uplifting the previously disadvantaged service providers. In addition, political leadership often lacks the will to review the 20 or 10 preferential procurement points to overcome fronting and bid rigging practices, which results when greedy service providers want to get tender awards.

7.3.4.5 Intended ultimate effects

New standards of measurement on service delivery should be developed because service delivery in South Africa is still a considerable challenge, based on the South Africa's past experience with a large backlog on service delivery. In an attempt to achieve the ultimate goal of strengthening and accelerating service delivery in South Africa, there should be a system or model that will help to improve service delivery. The process should be accelerated through developing a government system that will propose alternative models of public consultation, representation and accountability when developing public procurement legislation. In the end, it should ultimately deliver the most needed services in an efficient and speedy manner.

7.4 Revisiting the research questions as formulated in Chapter 1

Different research questions (who were linked to research objectives) were posed in Chapter 1 in order to fully understand and comprehend the research problem under study. Recalling from previous chapters, the study probed the possibility of the current legislation and its implementation negatively affecting service delivery in South Africa. This subsection presents some possible answers to sub-questions posed in chapters 1 and 5 after an analysis of the study findings and results, the research questions who were linked to the research objectives are discussed below.

a) Which legislation governs South African public procurement?

This question was addressed throughout the dissertation; however, its emphasis was in Chapter 3, where legislation governing public procurement in South Africa was discussed at length alongside with its implementation effects on service delivery. Chapter 3 revealed that South African public procurement legislation is deep-rooted from the country's Constitution s217, thereafter embedded in foundational prescripts and also embedded in non-foundational prescripts as categorised by the researcher.

b) What are the procurement challenges caused by public procurement legislation?

This question was thoroughly addressed in Chapter 2 and Chapter 6, where Chapter 2 presented theoretical and literature reviews relating to the current legislative challenges faced by public procurement. In support of Chapter 2, empirical evidence was presented in Chapter 6 where, among other challenges, it was discovered that poor communication and inflexibility of public procurement officials, which in most cases are due to legislative boundaries, thereby causing delays in the provision of public services.

Together, chapters 2 and 6 addressed the above research question through revealing that public procurement legislation fragmentation and lack of central legislative accountability causes service delivery delays, this was agreed by 79 percent of Chapter 6 respondents. There was respondents' view that the best procurement practices and procedures are not developed and shared across the country. However, one of the OCPO senior officials revealed that sometimes delays in service delivery are due to poor procurement planning, non-compliance and deliberate manipulation of public procurement prescripts however, the senior official also admitted that sometimes political interference, fraud and corruption do cause service delivery delays; the view shared by 89 percent of Chapter 6 respondents.

c) What are the strategies to be used in order to mitigate procurement challenges and risks?

Chapter 8 of this study presented some recommendations which addressed at length the above research question, the critical recommendations proposed to authorities were for adoption and implementation. There was a recommendation suggesting the consolidation of public sector procurement legislation in order to close gaps and inconsistencies. Chapter 8 also recommended the introduction of public procurement act as an overarching legislation, while Chapter 2 revealed that the three surveyed African countries have this act in operation for many years, meaning that South Africa is left behind in terms of reforms in this regard. Chapter 8 also recommended the establishment of a specialised National Bid Appeals Tribunal to be operated regionally and possess Chapter 9 institutions' powers in order to reduce cost of litigation by both government and service providers thereby delay service delivery.

There was also a recommendation that there should be an urgent balance between public procurement prescripts' compliance and service delivery as clean audits are meaningless if there is no accelerated service delivery. The establishment of a unit under the OCPO to focus on the analysis of public procurement related court judgments was recommended in order to urgently advise law-makers of the needed amendments to public procurement legislation. There was also a recommendation that public procurement ought to be professionalised through collaboration and co-ordination between industries, academia and government. There should also be a development of an effective risk management framework and guidelines for public procurement operation. The establishment of an independent public procurement regulator to oversee public procurement in South Africa was also recommended as a strategy.

d) What are corruption and fraud practices in public procurement and how to mitigate them?

Chapter 2 revealed three different types of fraud and corruption as described by Rose-Ackermann and Palifka (2016) that there is clientelism corruption, which is based on the notion of “give and take”, and it involves a patron and a client. The second type of corruption is grand corruption, which is based on no obligation to “give and take”, mainly this is where large scale of money squandering happens through well connected elite individuals due to lack of rule of law. The third type of corruption is state capture where few elite individuals control state institutions for self-gain on the expense of ordinary citizens of the country. In trying to mitigate or measure the corruption, Sarakinsky (2015) enhanced the corruption formula to be $Corruption = (Monopoly + Discretion - Accountability) \div Ethics$; which indicates that corruption is increased if officials in public procurement have too much monopoly and discretion without any checks and balances in their decision making processes. The formula also indicates that corruption further increases if we reduce accountability and divide the whole equation by little ethics.

Chapter 6 also revealed a combined total of 98 percent of respondents agreeing that corruption delays service delivery, because if suppliers are awarded contracts based on other criteria rather than past experience and price, the chances of getting sub-standard quality work are high. Therefore, Chapter 8 presented a recommendation that there should a development of an efficient and effective risk management framework and good guidelines specifically for public procurement to mitigate among other challenges, the fraud and corruption.

e) Which public procurement legislation needs to be reviewed?

Chapter 3 comprehensively addressed this research question under section 3.8.1, where discussions of court judgments were presented. Some of the legislation reviewed were the regulations promulgated under the PPPFA. Evaluation of tenders on functionality and acceptance of unsolicited bids guidelines should be reviewed. The fact that Preferential Procurement Regulations (PPR) of 2011 and that of 2017 are still not aligned to the section 2(1)(f) of PPPFA, therefore the recommendations to National Treasury would to align these two contradicting legal instruments.

f) What model or framework for adoption would make public procurement more effective?

This research question was covered by Chapter 7 which presented key contributions to public procurement body of knowledge. Therefore, it is in the above context that this chapter started with the dissertation’s contribution to public procurement body of knowledge in four unique phases. Phase one analysed each chapter’s contribution towards answering the research questions posed in Chapter 1 in conjunction with analysis of research objectives. Phase two outlined theoretical contributions, where literature reviews and case studies conducted were analysed and deductions briefly outlined. Phase two also showed that dependent variables (public procurement legislation, processes and fraud and corruption) are causing the independent variable (service delivery) to be decelerated and thereby approving the study hypothesis. Phase three also reflected on specially articulated methodological contributions

which were used to conduct the study in terms of research methodology innovations. Phase four showed the study practical contributions to the body of knowledge by proposing a conjectural model to be adopted by National Treasury to avoid legislative hindrances towards accelerated service delivery. The above was informed by the causes of delayed service delivery that emerged from the empirical study and literature review.

7.5 Conclusions

The chapter discussed the background and reasons for recommendations' build-up as they will be presented in the next Chapter 8. The chapter presented key contributions to public procurement body of knowledge in the form of four interrelated phases. The first phase described theoretical contributions through chapter summary reviews where one of the chapters indicated that public procurement operate under tight political and legislative environment. It was also discovered that clean audit does not translate to improved service delivery, therefore there should be a balance between legislation compliance and accelerated service delivery. It was also discovered that public procurement does not perform supply chain management but mainly one element which is procurement and the researcher concluded that no single organisation performs the entire supply chain management at once. It was discovered that South Africa does not have a public procurement act, e-procurement systems nor does it have a public procurement regulator to oversee public procurement operations as other three African countries surveyed do.

The chapter also discussed the second phase which relate to methodological contributions as some benefits of using a tripartite data collection methods of questionnaires, interviews and document reviews coupled by three African countries case studies were discussed. The chapter revealed new strategy used by the researcher to use a hybrid research method of combining quantitative and qualitative methods. This was followed by a brilliant idea of the researcher to conduct a pilot study to measure the effectiveness of research instruments. As a third phase, the chapter presented practical contributions as conducting three case studies of the three African countries where there were three lessons learned by South African public procurement. The three lessons related to the introduction of the long overdue public procurement act, adoption of e-procurement and the establishment of a public procurement regulator. The chapter introduced the fourth and last phase of contributions to body of knowledge as it proposed the adoption of the normative model to be used to ensure public procurement effectiveness. The model covered among other pillars the service delivery hindrances, intended immediate results and intended ultimate results from the public procurement reforms.

Lastly, the chapter revisited the research questions which were formulated in Chapter 1 in trying to seek for possible answers from the research findings.

The following Chapter 8 outlines the summary of the entire study, specific key study recommendations and conclusions relating to the proposed findings of the research.

CHAPTER 8

RECOMMENDATIONS, SUMMARY AND CONCLUSION

8.1 Introduction

Chapter 6 discussed the findings of the study after an analysis of the gathered data. Then Chapter 7 presented key contributions to public procurement body of knowledge which were discussed in four interrelated phases of theoretical contributions, methodology contributions, practical contributions and development of a model or framework to be adopted by National Treasury. Chapter 7 also revisited each research question in seeking for possible answers from the research.

It is for the above reasons, that this chapter focuses on presenting a summary of the findings' analysis for the study and the conclusions drawn from the previous chapters. This chapter will also revisit and review each research objective in seeking for possible solutions from the research. This chapter will further discuss limitations and suggestions for further research in this field. Then, a brief summary of findings' analysis will be followed by fifteen study recommendations. The main reason or main objective of the study was to probe whether or not public procurement practices (through legislation) and its implementation have any negative impact on accelerating service delivery in South Africa.

8.2 Background to study recommendations

This chapter aims to provide insight on recommendations about public procurement legislative practices for national government, particularly the National Treasury as a custodian of public procurement prescripts. Furthermore, it aims to make suggestions that will assist the National Treasury in managing proper and wide consultation with all procurement specialists in all three spheres of government and other stakeholders. The consultation process is aimed at aiding policy makers to formulate better ways to improve service delivery through carefully drafting, consulting, promulgating and guiding the implementation of any public procurement reforms in South Africa.

The study explored the possibility of some public sector procurement legislation being reviewed in order to accelerate service delivery. Furthermore, the study critically analysed the root causes of service delivery delays in South Africa that relates to public sector procurement legislation.

8.3 A revisit of the research objectives

Chapter 1 posed various research objectives (who were linked to research questions) in order to fully understand and comprehend the research problem. Recalling from previous chapters, the study probed the possibility of the current legislation and its implementation negatively affecting service delivery in South Africa. This subsection presents some possible solutions to

sub-objectives posed in Chapter 1 after an analysis of study findings and results, the research objectives are reviewed below.

- **To determine legislation that governs the South African public procurement**

The study managed to determine where the legislative roots of public procurement are, as it discussed at length the legislation that governs South African public procurement in Chapter 3. It was revealed that public procurement legislation is deep-rooted from the country's Constitution s217, which gives effect to foundational and non-foundational prescripts which were clearly categorised by the researcher in Chapter 3.

- **To determine procurement challenges caused by public procurement legislation**

Chapter 6 of the dissertation discovered that poor communication and inflexibility of public procurement processes are among other challenges faced by the public procurement in South Africa. The inflexibility of government procurement conditions makes it difficult for emerging suppliers to conduct business with the public sector. Prior investment in R&D is a prerequisite in some products and industries; this is because innovative service providers always strive to offer the best quality with efficient costs and this is only possible if service providers invest in advance to prepare for future tender requirements. As a result, innovative service providers are very reluctant to invest in the future needs of public sector, as they cannot predict the future plans of government.

- **To determine public procurement legislation that should be reviewed**

The above research objective was addressed at length by the discussions of court judgments that was presented in Chapter 3. Some of the legislation reviewed solely for public procurement purposes were the regulations promulgated under the PPPFA. Evaluation of tenders on functionality and acceptance of unsolicited bids guidelines were also reviewed. The fact that PPR of 2011 and that of 2017 are still not aligned to section 2(1)(f) of the PPPFA, therefore the alignment of these two contradicting legal instruments is important.

- **To determine strategies to be use in order to mitigate procurement challenges and risks**

Critical recommendations proposed to authorities for adoption and implementation were presented in Chapter 8 of this dissertation. One of the strategies was a consolidation of public sector procurement legislation and an introduction of public procurement act as an overarching legislation. Another key strategy recommended was an establishment of a public procurement regulator, to independently and impartially oversee public procurement in South Africa.

- **To determine an effective public procurement model or framework to be adopt**

Chapter 7 helped the above research objective to realise key contributions to public procurement body of knowledge. Theoretical contributions were analysed in each chapter towards giving solution to the above research objective. Literature reviews and case studies conducted were analysed and deductions briefly outlined. Methodological contribution to body of knowledge was reflected on specially articulated research methods which were used to conduct the study in terms of research methodology innovations. Practical contributions to the body of knowledge tried to give solution to the above research objective through proposing a hypothetical model to be adopted by National Treasury to avoid legislative hindrances towards accelerated service delivery.

- **To determine public procurement fraud and corruption practices that should be mitigated**

The research has broadly shed some light on the nature, causes and underpinning reasons behind service delivery delays due to the South African public procurement legislation. Subsequent to the analysis of relevant literature, questionnaire and interview responses, a number of findings became apparent. It became evident that delayed service delivery is caused by fraud and corruption, 89 percent of respondents in Chapter 6 agreed. Furthermore, public procurement practitioners are not professionalised, there is no segregation of duties in public procurement which create a room for collusion with suppliers thereby resulting in corruption and fraud. The above corruption and fraud practices were escalated by fragmented public procurement legislation, poor training of public procurement practitioners and the non-existence of a public procurement risk management strategy.

8.4 Limitations and suggestions for further research

Although the study has been successfully completed, it was not without some limitations and glitches. There were several limitations with mitigation strategies that have been identified with regard to the study, which can be summarised as follows:

The study was conducted only in selected major service delivery institutions from the departments of Health, Public Works, Human Settlements, Social Development and Transport in all nine provinces and one large municipality from each of the nine provinces. This is because these selected institutions interact directly with grass-roots citizens and infrastructure development-related service delivery. For this reason, the study cannot be generalised to those government institutions which were not part of the study; however, the findings can be used as a benchmark for all government institutions. Another study limitation was the respondents' slow pace in completing the questionnaire and agreeing to attend the scheduled interviews, which delayed the data analysis and interpretation processes. There were time constraints during the years of study as the researcher is employed full-time, making the time available less than ideal for a large study such as this.

For future research on the subject, scholars would be encouraged to go deeper in each of the identified causes of delayed service delivery due to public procurement legislation. This is to uncover the specific underlying dynamics involved in the causes and further unpack each recommendation provided by this study.

8.5 Study recommendations

Based on the above study background, study limitations as well as empirical research findings, the following recommendations, which stem from the empirical study and literature review, are proposed to be implemented by the National Treasury through the OCPO.

RECOMMENDATION 1: Consolidation of Public Procurement Legislation

- **Current challenge**

There are too many pieces of legislation which govern public procurement, some only applicable to local government, some only applicable to national and provincial governments and some applicable to all three spheres of government, which causes lot of confusion among the public procurement practitioners. Public procurement practitioners cannot keep up with the scatteredness of public procurement legislation, as a result legislation becomes ambiguous and is thus open to subjective interpretation and implementation.

There are several gaps in the legislation which should have been closed as soon as they became visible; the government should not delay closing them while the gap is being used for corrupt activities. Furthermore, there are many inconsistencies in dealing with similar or related matters, some national and provincial procurement thresholds are set out in National Treasury instructions notes; however, at municipal level they are set out in regulations. It is clear that gaps and fragmentation of public procurement legislation leads to corruption as confirmed in the empirical results analysed.

- **Empirical data results**

A combined 69 percent of the respondents agreed that public sector procurement legislation is fragmented, had a lot of gaps and inconsistencies that lead to delays in the delivery of services. The findings pose a huge challenge to National Treasury, as custodian of public procurement legislation, to ensure that there is radical consolidation of the legislation governing public procurement.

- **Way forward**

To have consolidated public sector procurement legislation, without gaps and inconsistencies, would be an ideal situation in South Africa. This is to ensure that all public procurement prescripts and processes are streamlined and easy to implement and eventually speed up service delivery, which is generally an ultimate goal of the government. South Africa to urgently introduce the public procurement act as an overarching legislation as revealed in Chapter 2 that the three surveyed African countries have this act for many years ago, meaning that South Africa is left behind in terms of reforms in this regard.

RECOMMENDATION 2: Establishment of an Independent and Impartial Public Procurement Regulator

- **Current challenge**

There is no legislated independent public procurement regulator to regulate public procurement operations in South Africa. National Treasury partially execute this mandate but it lacks independence and impartiality as National Treasury is also a normal government department which must also be monitored and regulated, then the big question that arises is: Who monitors or regulates the National Treasury?

- **Empirical data results**

Literature review revealed that there were three main reasons why case studies of public procurement in Kenya, Zambia and Zimbabwe were conducted, the third one was that South Africa does not have an independent and impartial public procurement regulator which these three countries already have.

- **Way forward**

After a thorough review of literature, it was discovered that South Africa could learn three lessons from the case studies of the three African countries; the third lesson was for South Africa to learn how to establish a procurement regulator, to independently and impartially oversee public procurement operations.

RECOMMENDATION 3: Clean Audits Versus Service Delivery

- **Current challenge**

Public procurement practitioners focus more on complying with the public procurement prescripts and neglect quality and speedy service delivery.

- **Empirical data results**

A combined 42 percent of the respondents disagreed that clean audits translate into service delivery, there was an indication that clean audits can result in under-spending and lack of innovation which is not improving service delivery. Government is caught in the process of compliance whilst delaying the service delivery.

- **Way forward**

The National Treasury should create a balance in ensuring that compliance with public sector procurement prescripts does not delay or hinder service delivery. Therefore, a position needs to be taken, where all predetermined objectives of service delivery must be met before a clean audit can be recognised; otherwise, clean audits are meaningless without accelerated service delivery.

RECOMMENDATION 4: Public Procurement Court Judgments analysis

- **Current challenge**

Public procurement procedures are categorised as administrative actions (pre-award), however, once the bid winner is chosen, the agreement is therefore executed under the normal laws governing any contracts. However, once the bidder has been given an award letter confirming them as the winner and one of the failed bidders lodges a grievance or litigation in court the contract agreed upon between the government institution and a successful bidder becomes void. The process automatically stops the service delivery project until the grievance or litigation is resolved (which can take months or years) (Roos & De la Harpe, 2008).

- **Empirical data results**

A combined 20 percent of the respondents indicated that OCPO does not consider court judgments relating to public procurement when issuing procurement prescripts; this indicates that government employees need to understand the loopholes in legislation and the potential procedural mistakes. A worrying 28 percent of respondents indicated that they do not know if OCPO considers recent court judgments when issuing practice notes, in summary this might mean that it is not done or if it is done, it is not effective in helping the practitioners to operate efficiently.

- **Way forward**

The National Treasury must establish a unit under the OCPO that will focus on the analysis of the court judgments that have implications for public procurement and advise lawmakers in terms of amendments necessary in public procurement prescripts.

RECOMMENDATION 5: Private Sector Procurement Best Practices Benchmark

- **Current challenge**

Private companies work and procure on a completely different level of legislative compliance and have much more freedom to manoeuvre their procurement processes like the very important procurement negotiations compared to the public sector. In contrast, negotiation is discouraged in the public sector as it is mostly viewed as creating room for more bribery and corruption. It is because of corruption and fraud in the public sector that the free and easy procurement processes have been taken away in order to ensure fair government procurement processes, but this results in a highly regulated environment.

Communication between public procurement practitioners and service providers is seldom satisfactory; there is government inflexibility for innovative and alternative products proposal by bidders. Furthermore, public sector procurement authorities generally do not communicate what future tenders are scheduled.

- **Empirical data results**

A combined 81 percent of the respondents agreed that there are lessons to be learned by

public sector procurement practitioners from their private sector counterparts. The results show an appreciation of the existence and complementarity of these two procurement sectors. Furthermore, the private sector is running continuous improvements to their processes which creates new systems, innovations and techniques, which is not the case in public sector procurement.

- **Way forward**

There should be better communication between public procurement authorities and service providers which will enable bidders to clearly understand what products are needed and most suitable to satisfy the service delivery needs as efficiently and effectively as possible.

Public procurement must adopt the style practiced in private sector procurement whereby private organisations are usually better when it comes to allowing bidders enough manoeuvring space for new solutions and innovation. As happens in the private sector, if a prospective supplier had good reasons for offering better alternative solutions, there is always possible to contact the private procurement managers and argue for these solutions.

In some industries, service providers may need to put some efforts in investments for product R&D way before the actual bidding procedure starts in order to meet the requirements. As a result, innovative service providers are very reluctant to invest in the future needs of public sector, as they cannot predict the future plans of government. Improved predictability in public sector procurement can stimulate innovation in the right direction; therefore, the public sector ought to be open and share the future procurement plans of government. There are lots of lessons that the public procurement practitioners can learn from their private sector counterparts; this is because private sector procurement runs continuous improvements on their processes, which creates new systems and techniques for better procurement operations.

RECOMMENDATION 6: Public Procurement Dispute Resolution Mechanism

- **Current challenge**

Departments like Human Settlements in various provinces often return funds or grants ring-fenced for Reconstruction and Development Programme (RDP) houses back to the National Treasury due to underspending. Among the reasons for funds being returned is the issue of rigid legislation, which prohibits government institutions to re-advertise any construction related tenders within six months after cancellation of the first advertisement. Furthermore, in most of the cases cancellation is due to the aggrieved service providers lodging court appeals that are sometimes vexatious, frivolous and without merit, which then compels the government institution concerned to stop the service delivery process and attend to the aggrieved service providers' litigation.

- **Empirical data results**

A majority of the respondents (75 percent) agreed that the formation of a dedicated bid appeals resolution mechanism that would be operated nationally with regional (provincial)

branches would enhance public procurement performance. The appeals tribunal that has been in operation in KwaZulu-Natal provincial government for many years and has been very effective, should be rolled out nationally as soon as possible.

- **Way forward**

It is for the above reasons that National Treasury needs to urgently establish the National Bids Appeals Tribunal (NBAT) that must serve independently. The purpose of the NBAT would be to receive, hear and decide on grievances against the award of any bids by any government institution. An order issued by NBAT may be legally enforced and binding as if it were issued in civil proceedings in a court with jurisdiction or in a Chapter 9 institution. Therefore, the process might require some legislation to be enacted and some be reviewed, the Public Finance Management Act among others. There should also be an establishment of a public procurement regulator, to independently and impartially oversee public procurement in South Africa.

RECOMMENDATION 7: Effective OCPO Communication Strategy

- **Current challenge**

The National Treasury periodically issues practice notes and circulars without consulting with procurement practitioners in all three spheres of government and sometimes practice notes are withdrawn very soon (as little as five days) after they were issued.

Because they are so fragmented, some legislation is not communicated effectively and efficiently to public procurement practitioners to help them be understood and then implemented properly; which causes some government institutions to start implementation late which results in audit issues.

- **Empirical data results**

A combined 25 percent of the respondents strongly disagreed that there is a proper and effective communication strategy in the OCPO for public procurement practitioners. It was indicated that OCPO issues so many circulars, practice notes, guidelines that practitioners cannot keep up, some practice notes even contradict each other.

- **Way forward**

There is an urgent need for improvements in consulting with public procurement practitioners and all other stakeholders from all three spheres of government by National Treasury when drafting public sector procurement prescripts.

A quarterly National Public Procurement Forum (NPPF) should be established with fair representation of all government institutions including national, provincial and local governments. The NPPF should have branches housed at each provincial treasury and at each regional district or metropolitan municipality. Therefore, public procurement regulations, practice notes and all other prescripts are to be drafted in consultation with the members of the NPPF. Furthermore, the said public procurement prescripts must be finalised and

promulgated through the auspices of the NPPF to avoid and prevent the unintended consequences and sudden withdrawal of the issued public procurement prescripts. The NPPF would have the following objectives, among others:

- Sharing of knowledge, expertise and skills as a platform to inform public procurement requirements in the country, provinces and regions.
- Sharing of lessons learnt, experiences and to assess some operational effectiveness throughout the country, provinces and regions.
- To identify some common challenges and possible solutions and to establish a standardised public procurement approach for country, provinces and regions.
- To act as a platform to monitor progress within a specific period, and to resolve the challenges government institutions might be experiencing.
- Discuss and analyse new regulations, prescripts and share best practices.
- Establish the programme of action for the projects to be completed as well as ensuring the accomplishment thereof; and to champion capacity building.

To establish an Annual Public Procurement Conference (APPC) with the following objectives of trying to strengthen public procurement communication and knowledge sharing platforms:

- Brainstorm ideas to improve public procurement, financial governance and remedial action needed.
- Build communities of practice among public procurement practitioners.
- Build a culture of accountability in public sector procurement.
- Identify new and improved practices and workable solutions that could assist public procurement practitioners in performing their work efficiently and effectively.
- Create a platform for public procurement practitioners to update their knowledge and awareness of the latest trends and developments in the public procurement field and in public financial management in general.
- Highlight and share good standards, norms and practices.
- Be a repository of best practices for market research and specifications drafting, among others.

RECOMMENDATION 8: Public Procurement Risk Management Framework

• Current challenge

Based on the analysed results in Chapter 6, there are considerable risks for public procurement integrity associated with the actual delivery of services to the citizens. Inadequate needs assessment, procurement planning, proper budgeting and poor specifications drafting are some of the common mistakes and risks associated with the pre-bid processes. There are a lot of risks associated with public procurement even at the post-bid stage, like short, late or wrong deliveries.

- **Empirical data results**

A combined 93 percent of the respondents strongly agreed that poor risk management strategies in public procurement lead to fraud, which in turn results in poor, or slow, service delivery.

- **Way forward**

National Treasury should provide for an effective risk management framework and guidelines for public procurement which should be implemented immediately. This is to ensure that risks are identified on a case by case basis in each procurement initiative, thereby allocating different risks to those parties who can best manage them or accept the associated non-transferable costs. National Treasury should communicate these risks to the public sector procurement practitioners.

RECOMMENDATION 9: Introduction of Public Sector Strategic Sourcing

- **Current challenge**

Current legislation hinders the full implementation of service delivery through public procurement, some legislation prohibits any negotiations with suppliers and long-term relationships with suppliers are not allowed. Furthermore, the capability of the government institution's workforce structure is not conducive to produce a successful strategic sourcing, as there are no relevant positions in the current organisational structures, such as category managers, commodity managers and cross-functional teams.

- **Empirical data results**

A combined 42 percent of the respondents agreed that public procurement legislation hinders the full implementation of strategic sourcing due to the lack of clarity on how National Treasury Regulation 16A6.5 is supposed to be used, since the current interpretation is that participation in transversal contracts is voluntarily, while it is supposed to be compulsory if this system is to work properly. Furthermore, respondents indicated that another challenge is Section 38(2) of the PFMA, which limits the powers of accounting officers to contracts not exceeding the Medium Term Expenditure Framework (MTEF), which is around 3 years.

- **Way forward**

Some legislation must be reviewed because it hinders full implementation of strategic sourcing in South Africa, legislation like Treasury Regulation 16A6.5, section 38(2) of PFMA, MFMA and Municipal SCM Regulations. This will help government to get the benefit of being the largest spender in the Gross Domestic Product (GDP).

RECOMMENDATION 10: Public Procurement Fraud and Corruption Prevention Strategy

• Current challenge

Due to political pressures, employees are sometimes compelled to be non-compliant with public procurement prescripts and procedures because of fear of losing their jobs and, in the worst case scenario, fear of losing their lives. Many government institutions do not prioritise filling vacancies in procurement, which then makes it difficult to implement an effective segregation of duties in public procurement, which then opens up room for corruption. Furthermore, some public procurement practitioners will always find a way to circumvent the system and still commit fraud and corruption. This all feeds back into the lack of principles, ethics and morals.

• Empirical data results

A combined 89 percent of the respondents agreed that public procurement practitioners recognise some public procurement political interference; however, due to political pressures and the prominence of politicians, they are sometimes compelled not to comply with procedures and prescripts. Some public procurement practitioners fear that they might lose their jobs and even lives, thereby vulnerable to fraud and corruption).

The majority of the respondents (64 percent) strongly agreed that some politicians use public sector procurement to give tenders to their friends and elites. The segregation of public procurement duties in order to enhance efficiency in public procurement practices and performance was strongly agreed upon by 92 percent of respondents; furthermore, the segregation of the duties would ultimately improve compliance with procurement prescripts.

A combined 83 percent of respondents strongly agreed that training on ethics and moral values can decrease public procurement fraud. A further 93 percent strongly agreed that conflict of interest and the lack of transparency in public procurement leads to more instances of fraud and corruption, which hinder service delivery. A combined 98 percent strongly agreed with the statement that suggested that fraud and corruption causes delays in service delivery.

• Way forward

It is recommended that guidelines on the implementation of segregation of duties in the public procurement should be developed urgently by the National Treasury. There is a pressing need for strategies to combat fronting practices and that public procurement practitioners should be aware of a number of signs of bid rigging. Furthermore, the Competition Commission of South Africa can help public procurement institutions identify the signs of non-compliance at early stages of the procurement process.

RECOMMENDATION 11: OCPO Structured Skills Training

- **Current challenge**

As it stands, some public procurement practitioners have never been subjected to any training on public sector procurement legislation and/or processes, they just learned public procurement along the way as part of their work duties. Lack of training for public procurement practitioners is not a good reflection on OCPO, especially when public sector procurement nationally is facing lot of qualified audits.

- **Empirical data results**

The strong relationship between non-compliance with public procurement prescripts and training was confirmed by a combined 91 percent of the respondents. Furthermore, 62 percent of the respondents strongly disagreed that the OCPO provides adequate training to public sector practitioners. This shows that the training does not always take place when it is needed most.

- **Way forward**

Minimum competency levels in the local sphere of government was implemented a couple of years ago and it should be adopted throughout public sector financial management in provincial and national governments. Public sector procurement practitioners mostly prefer the “know-how” training programmes when it comes to public procurement training; which means that they prefer skills programmes that teach them how to actually do the job rather than a formal theoretical and academic training programme. National Treasury will have to develop a public procurement skills programme that will take care of the public procurement practitioners’ capabilities, thereby ensuring prospects of work and labour mobility in order to accelerate service delivery. Furthermore, public procurement practitioners should be encouraged to participate in learning programmes for knowledge empowerment.

National Treasury should provide an institutional framework to develop and implement national and workplace strategies to improve the skills of the public procurement workforce; and further to provide public procurement learnerships that will lead to recognised public procurement qualifications, working with the Quality Council for Trades and Occupations (QCTO).

RECOMMENDATION 12: Higher Education Institutions and OCPO Partnership

- **Current challenge**

Public sector procurement is a new field of study in South Africa and globally. There are no formal qualifications in the public sector procurement field such as a Bachelor of Commerce in Public Procurement with relevant content, which could be used to produce graduates at bachelor level and other levels.

- **Empirical data results**

A total of 21 percent of the respondents alluded that some training providers use training

material that is outdated, with some lecturers never having worked in public sector procurement operations, therefore they do not understand the culture, processes and the needs of government. Furthermore, a worrying 19 percent indicated that they “don’t know”, which indicates the possibility that they might have been trained with out-dated material and they did not recognise it.

- **Way forward**

Qualifications should be developed in order to provide graduates with knowledge and specific skills in public procurement and applied competence in the fields associated with public financial management. Adopting a Mode 2 university type (theory and practical combined) to offer these qualifications is therefore a priority if they want to ensure that maximum benefit is attained through the qualifications. It would be important to ensure international best practices are taken into account during the development and design of learning material supporting the qualification.

RECOMMENDATION 13: Public Procurement Professionalisation Strategy

- **Current challenge**

There is a lack of coordinated professional bodies for public procurement in the country (professional organisations, academia and government). There is a lack of urgency in National Treasury’s role to create an environment to set out norms and standards in order to align professionalisation in public procurement. Therefore, there is a need to align different stakeholders around the shared vision of consolidated public sector procurement activities with a common understanding of public procurement needs in South Africa.

- **Empirical data results**

A combined 94 percent of respondents strongly agreed that good governance principles reduce fraud, which therefore enhances service delivery. Furthermore, respondents indicated that good governance must be practiced even more by top management to spread such moral standards through to the lower levels. This can be achieved by professionalising public procurement.

- **Way forward**

Government public procurement agenda

- Ensure collaboration and co-ordination between industry (through their professional bodies), academia and government to bridge the gap between industry realities and academic expectations towards improved service delivery.
- Align communications with organisations from the private and public sectors on matters relating to skills development, education and other public procurement related concerns.

Academic institutions

- Propose curricula with professional bodies to maintain norms and standards in addressing the public procurement needs of the country.

- Conduct academic research to improve public procurement operations.

Examinations

- Examinations must be conducted towards awarding professional designations, led by professional bodies to ensure quality and credibility.
- The examination process conducted by submission of a portfolio of evidence and other means.

Continuous professional development

- The professional body shall endorse professional development programmes, thereby awarding CPD points for professional development in the public procurement workforce.
- The professional body shall train and empower trainers (train the trainer programmes) of government institutions and offer continuous professional development interventions as the need arises.

Membership and designations

- The professional body to develop a road map for public procurement training, membership accreditation and professionalisation in South Africa.
- The professional body to determine professional designations on public procurement professionalisation with exit level outcomes based on the needs of South Africa.

License to practice

- The professional body to ensure that codes of good practice standards and norms are met and aligned with offerings of professional bodies as well as academic institutions therefore, the professional bodies to issue qualifying candidates with a license to practice.

RECOMMENDATION 14: Public Procurement Practitioner Talent Pipeline

• Current challenge

There is a lack of effort in preserving institutional memory and Body of Knowledge (BoK) that is badly needed in the public sector, especially in procurement units. Empirical data analysis has proven that less than 41 percent of respondents were in the public procurement units for more than 10 years, which is an indication of the serious shortfall in public procurement workforce planning.

• Empirical data results

In terms of education status, the majority of respondents (75 percent) possessed tertiary education, therefore, findings indicate that the respondents have the capacity and capability to comprehend and contribute meaningfully to the public procurement operations, which is a positive factor within the public procurement workforce. The high percentage, 41 percent, of respondents not leaving the public sector procurement for the past 10 years indicates the low employee turnover, which is another positive. Public procurement is arguably a specialised function; therefore, there would be no need for recruiting outsiders to fill vacancies.

However, one of the shortfalls in public procurement currently is the lack succession planning. This should be included in the human resources strategy in order to prevent public sector procurement professionals from leaving the public procurement sphere.

- **Way forward**

Important partnerships between the Department of Public Service and Administration and National Treasury should start developing strategies and guidelines for retaining workforce and succession planning in order to preserve institutional memory and BoK in public procurement.

RECOMMENDATION 15: Public Procurement Socio-Economic Transformation Strategy

- **Current challenge**

The government is using BBEEA to appoint service providers with too little experience; this is confirmed by the empirical results analysis in Chapter 6 of this dissertation. In most instances the appointed BBEE companies do not complete projects allocated to them on time and sometimes they deliver shoddy workmanship in order to maximise profits, while their financial management skills are often in serious disarray. In most cases, BBEE service providers receive a tender award and start incurring unnecessary debts by buying luxury cars and living an expensive lifestyle.

The current preferential procurement system in South Africa has loose or resistant rules, which are also poorly enforced, therefore providing opportunities for misuse of the contract awarding processes through corruption. Especially where service providers produce fraudulent BBEE certificates while claiming 20 or 10 preferential procurement points for the tender to be awarded to them and these 20 and 10 points are still not sufficient and they make very little difference. A balance must be maintained by government between radical socio-economic transformation and quality of service delivery. For example; a previously disadvantaged supplier is allowed to price between 11 and 25 percent more than that of a previously advantaged supplier.

- **Empirical data results**

A combined 72 percent of respondents disagreed that BBEEA is another form of public sector procurement discrimination, which indicates that socio-economic transformation through BBEEA is still needed, however it needs to be implemented properly. BBEE seeks to transform the economy and correct the imbalances of the past as black communities are now getting opportunities to contribute towards the gross domestic product of the country. Furthermore, a combined 44 percent of respondents disagreed and indicated that until now the 80/20 or 90/10 preferential procurement system is making no significant difference to socio-economic transformation; to practitioners it is just the rules that must be implemented. This rule has good intentions but the implementers have found loopholes to benefit themselves or a few individuals.

- **Way forward**

The government should uplift BBBEE companies by enforcing the subcontracting of big and experienced companies in certain industries with emerging BBBEE companies to gain exposure and experience. A review of the 80/20 and 90/10 preferential procurement system with the aim of increasing the 20 and 10 BBBEE contribution points is urgent. Government must be prepared to pay premiums (11 to 25 percent) but not at the expense of quality and speedy service delivery.

RECOMMENDATION 16: Removal of Public Procurement from CFO

- **Current challenge**

Public procurement is not well represented at the executive level while it is still under a Chief Financial Officer, therefore crucial matters pertaining to public procurement are not elevated to a high strategic level in government institutions.

- **Empirical data results**

A combined 41 percent of respondents agreed that public procurement should be elevated so that it is reported directly to an accounting officer. There should be someone at the level of the CFO or higher who has a vast knowledge of public procurement processes, is independent and only reports to the accounting officer. Such a person might be called the Chief Procurement Officer.

- **Way forward**

Making or reviewing legislation to allow the removal of public procurement from CFO should be a stand-alone strategic function of government institutions. Authorities and accounting officers are responsible for formulation and implementation of appropriate procurement systems; the next level in charge should be a head of procurement at an executive level, not as they are now with a CFO heading public procurement. This requires that procurement should be practiced and applied at the executive, strategic and management level.

8.6 Summary of recommendations

Although there is a strong perception supporting this and some respondents also suggested that the OCPO does not consider recent court judgments when issuing practice notes on public sector procurement, this study could not find any substantial scientific evidence to support such a notion, with a combined total of 52 percent respondents disagreeing with such notion.

After a rigorous probe, findings and analysis of the research, a summary of some critical recommendations were found to be the consolidation of public sector procurement legislation, without gaps and without inconsistencies. The establishment of a National Bids Appeals Tribunal (NBAT) to serve independently and is recommended to receive, hear and decide on grievances against the award of any bids by any government institution. This

process might require some legislation to be enacted and some reviewed, possibly the Public Finance Management Act, among others.

The National Treasury should create a balance between ensuring that compliance with public sector procurement prescripts does not delay or hinder service delivery, because clean audits are meaningless without accelerated service delivery. National Treasury should ensure public procurement is professionalised by ensuring collaboration and co-ordination between industries (through their professional bodies), academia and government to bridge the gap between industry realities and academic expectations towards improved service delivery. In light of the summary above, an efficient and effective *Procurement practices versus service delivery normative model* (as detailed in Chapter 7), has been proposed to help achieve these recommendations.

Furthermore, the National Treasury will have to train public sector procurement practitioners in skills programmes that teach them how to do the job, and in addition teach them in a public procurement formal theoretical and academic training programme, which is currently not available in South Africa. Important partnerships between the DPSA and National Treasury should start developing strategies and guidelines for retaining workforce and succession planning in order to preserve institutional memory and BoK in public procurement. National Treasury should provide for an effective risk management framework and establish guidelines for public procurement, to implement immediately, in order to ensure risks are identified on a case by case basis in each procurement initiative, thereby allocating different risks to the parties who can best manage it.

There should be an establishment of a quarterly National Public Procurement Forum (NPPF) to have fair representation from national, provincial, local governments and all other government institutions. NPPF will ensure to identify some common challenges and possible solutions and to establish a standardised public procurement approach for country, provinces and regions and to establish a standardised public procurement approach for South Africa. Furthermore, there should be an establishment of an Annual Public Procurement Conference (APPC) in order to identify new and improved practices and workable solutions that could assist public procurement practitioners in performing their job efficiently and effectively.

Furthermore, qualifications ought to be developed in order to provide graduates with the knowledge and specific skills in public procurement and applied competence in the fields associated with public financial management. There should be better communication between public procurement authorities and service providers which will enable bidders a better understanding of what products and formats are the most suitable to satisfy the service delivery requirements as efficiently and effectively as possible. Public procurement must adopt the style practiced in private sector procurement whereby private corporates generally allows bidders enough space to manoeuvre for new and innovative solutions. In some industries, service providers may need to put some efforts in investments for product R&D way before the actual bidding procedure starts in order to meet the requirements.

The National Treasury must establish a unit under the OCPO that will focus on the analysis of court judgments that have implications for public procurement and advise lawmakers in terms of necessary amendments to public procurement prescripts. There is a need for urgent

strategies to combat fronting practices; therefore, the Competition Commission of South Africa can help public procurement institutions to identify the signs at early stages of the procurement process. The government should uplift BBBEE companies by enforcing big and experienced companies in certain industries to sub-contract with emerging BBBEE companies for them to gain exposure and experience. A review of the 80/20 and 90/10 preferential procurement systems with the aim of increasing the 20 and 10 BBBEE contribution points is urgent; furthermore, if the government is opting to pay premiums (11 to 25 percent) it must do so, however, not at the expense of quality and speedy service delivery. In addition, it is important to review the legislation that hinders full adoption and execution of strategic sourcing in public procurement. Public procurement should be removed from being under a CFO to be a stand-alone strategic function of government institutions. Finally, the South African government ought to urgently establish through the act of parliament a procurement regulator, to independently and impartially oversee public procurement in South Africa.

8.7 Deductions

Primarily the research probed the real causes of service delivery delays, with the assumption that there is a possibility of some public procurement legislation and its implementation delaying service delivery in South Africa. Furthermore, the study evaluated the possibility of reviewing some public sector procurement legislation in order to accelerate service delivery. The study focused on selected major service delivery institutions that interact directly with grass-roots citizens and infrastructure development-related service delivery in all nine provinces. Although the findings were based on the selected government institutions, they can also be used as a benchmark throughout the government institutions, therefore, the following conclusions are drawn from the findings of the study.

Based on the deliberations in all previous chapters, results from the empirical study as well as the literature review have discovered that the main reasons for service delivery delays are among others, too much compliance for clean audits and neglecting quality and speedy service delivery. The study also revealed that fraud, corruption and political pressures delay service delivery; with some BBBEE suppliers delivering shoddy work. Sometimes suppliers practice fraudulent activities such as submitting false BBBEE certificates while claiming 20 or 10 preferential procurement points in order to win tenders.

The study also revealed that there is poor strategic sourcing implementation in government institutions due to some legislation prohibiting it. Public procurement practitioners are often not professionalised, there is insufficient segregation of duties in public procurement leaving room for collusion with suppliers, were further causes found by the study. There was also a suggestion to remove public procurement from the Chief Financial Officer in order to elevate public procurement to a strategic function.

Finally, the dissertation should be viewed as a starting point for studies on the topic of public procurement practices versus service delivery, since a normative model was developed in order to address the critical matters of disjuncture between procurement practices (legislation) and service delivery. By implementing the suggested normative model, South Africa would achieve the proposed recommendations.

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APPENDIX A: PERMISSION REQUEST LETTER

Director-General
Department of Finance
Private Bag X 115
PRETORIA
0001.

01 June 2016

Dear Director-General

RE: REQUESTING CONSENT TO PARTICIPATE IN PhD RESEARCH QUESTIONNAIRE OR INTERVIEW

I am working for the National Treasury also a PhD (Public Management and Development Planning) candidate at University of Stellenbosch. This letter seeks to inform you and most importantly, seek your consent with regard to the participation of the selected employees (as listed below) in self-administered questionnaires and/or semi-structured interviews. The Questionnaires and Interviews are in partial fulfilment of the requirements for the degree of PhD in Public Management and Development Planning at University of Stellenbosch.

The following relevant officials are therefore requested to partake in this research, the SCM organizational structure of your institution might differ from the below list, please provide officials applicable to your SCM organisational structure:

- **Chief Director: SCM, Director: SCM, Deputy Director: SCM, Assistant Director: SCM, Senior Admin Officer: SCM, Practitioner: SCM**

The main purpose of this research is to critically probe the possibility of the current public sector procurement legislation negatively affecting service delivery mechanisms and offer recommendations for the review of public sector procurement legislation, especially legislation that inversely affect service delivery mechanisms. The research will be conducted in three spheres of the South African Government i.e. National, Provincial and Local spheres, with a special focus on major service delivery departments and municipalities that interact directly with grass-roots citizens one way or another and infrastructure development-related services; of which your institution is one of them.

I, undertake the following assurances:

- **that the findings of this research will be used solely for the stated academic purposes.**
- **that the names of the participants will not be divulged to anyone under no circumstances.**
- **that information gathered will be treated with extreme confidentiality.**

I hope to conduct such Questionnaires / Interviews during the period: 01 to 30 September 2016.

Thanking you in advance for your co-operation and assistance.

Mr. Sakhile Manyathi

University of Stellenbosch (Student No.: 19390661)



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APPENDIX B:

PhD RESPONDENT INFORMATION SHEET

Date information sheet provided: 01 September 2016

PhD research topic:

“THE INFLUENCE OF PROCUREMENT PRACTICES ON SERVICE DELIVERY: AN ANALYSIS OF GOVERNMENT LEGISLATION – SERVICE DELIVERY RELATIONSHIPS IN SOUTH AFRICA”

An invitation

My name is **Sakhile Manyathi**. I am a PhD (Public Management and Development Planning) candidate at University of Stellenbosch. I am conducting a research to determine whether the South African public sector procurement legislation has any inverse impact to accelerate service delivery. You are cordially invited to partake in a survey relating to the research. This will take about 20–30 minutes of your time. Before you decide, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask me if there is anything that is not clear or if you would like more information.

Please take some time to decide whether or not you wish to take part in this survey. Your participation is *voluntary* and you will be able to *withdraw* at any time prior to the completion of data collection without any adverse consequences.

What is the purpose of this research?

The main purpose of this research is to critically probe the possibility of the current public sector procurement legislation inversely affecting service delivery mechanisms and offer recommendations for the review of public sector procurement legislation, especially legislation that inversely affect service delivery mechanisms. The research will be conducted in three spheres of the South African government i.e. National, Provincial and Local spheres, with a special focus on major service delivery departments and municipalities that interact directly with grass-roots citizens and infrastructure development-related services.

What will happen in this research?

Data will be collected using an anonymous questionnaire and sometimes recorded interviews which both will be kept strictly confidential. The researcher will analyze the data collected in the survey or interviews and will use the analyzed results in his PhD thesis.

What are the benefits?

Firstly, the researcher will benefit from being able to complete and submit his PhD thesis on the stated topic to the examiners of the University of Stellenbosch. Thus, the results of the study would be used in a thesis as partial fulfilment for the PhD degree. Secondly, the findings of the research will also assist the South African government as a whole by offering recommendations for the review of public sector procurement legislation, especially legislation

that inversely affect service delivery mechanisms.

How will my privacy be protected?

No personal data will be collected as part of the survey. The questionnaire is anonymous, interview recordings will be highly secured with no unauthorised access and all published results will be in summary form.

What opportunity do I have to consider this invitation?

It is up to you to decide whether or not to take part. If you decide to take part you will complete the questionnaire. Moreover, if you decide to take part you are still free to withdraw before you submit the completed questionnaire without any penalty or loss, and without an obligation to give reasons. If you would like to know more about the research, please be free to contact the researcher.

How do I agree to participate in this research?

If you agree to participate in this research, please tick **YES**, otherwise **NO** box below and if yes is ticked, then please complete the questionnaire and/or attend the interview which you will receive via an email from the researcher.

Will I receive feedback on the results of this research?

Yes, you may contact the researcher at the email address provided below to request feedback after the research is completed. *Please note* that by contacting the researcher with this request, you will reveal yourself to the researcher as one of the survey participants. The results provided to you will be in summary form. Your details will be treated as *confidential* by the researcher.

What do I do if I have concerns about this research?

If you have questions regarding your rights as a research respondent, please contact Ms Maléne Fouché [mfouche@sun.ac.za; +27(0) 21 808 4622] at the Division for Research Development. Any concerns or questions regarding the nature and contents of this research or the conduct of the researcher should be notified to the **Research Supervisor**, Dr. L. Mortimer at Len.Mortimer@spl.sun.ac.za or +27(0) 21 918 4122.

Researcher's details:

Email: ManyathiS@sakhilemanyathi.co.za

Cell: +27(0) 72 597 7415

Email: Sakhile.Manyathi@treasury.gov.za

Tell: +27(0) 12 395 6537

I agree to partake in this research:

Yes

OR

NO

-----000000-----

Thank you for reading this and choosing to participate in this study

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APPENDIX C: SURVEY QUESTIONNAIRE

SECTION A:

RESPONDENT DEMOGRAPHIC QUESTIONS

A series of questions regarding your demographics are raised. Please go through each question and place a tick (✓) in the relevant block.

- a) Indicate which age group you fall into by placing a tick (✓) in the appropriate block.

21 to 30	
31 to 40	
41 to 50	
51 to 60	
Above 60	

- b) Indicate your highest qualification by placing a tick (✓) in the appropriate block.

Below Matric	
Matric	
Diploma	
B-Degree	
Other (specify)	

- c) Indicate your gender by placing a tick (✓) in the appropriate block.

Male	
Female	

- d) **Indicate how many years you worked for Government by inserting a tick (✓) in the appropriate block.**

Less than 1 year	
Between 1-2 years	
Between 3-5 years	
Between 6-10 years	
Over 10 years	

- e) **Indicate how many years you worked for Government in SCM section by placing a tick (✓) in the appropriate block.**

Less than 1 year	
Between 1-2 years	
Between 3-5 years	
Between 6-10 years	
Over 10 years	

SECTION B:	PUBLIC SECTOR PROCUREMENT QUESTIONS
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Please read the following statements and indicate your response with a tick (✓) to confirm whether you “strongly agree”, “agree”, “don’t know”, “disagree” or “strongly disagree”.

2.1 Fragmented public procurement legislation challenges

No.	Statement	Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree
1C1	Public sector procurement legislation in South Africa is highly fragmented					
1C2	Public sector procurement legislation fragmentation delays service delivery					
1C3	Recent public sector procurement reforms published by OCPO will improve public sector procurement					
1C4	BBBEEA compliance delays service delivery					

Please qualify your statements, if possible:

2.2 Non-compliance to public procurement legislation challenges

No.	Statement	Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree
2C1	Undue political pressures lead to non-compliance to public sector procurement legislation					
2C2	Non-training of public sector procurement practitioners lead to non-compliance to public sector procurement legislation					
2C3	Public sector procurement legislation is rigid and difficult to implement					
2C4	Segregation of duties improves compliance to public sector procurement legislation					
2C5	Public sector procurement legislation practice notes, circulars, guidelines issued by OCPO are adequate to ensure compliance					

Please qualify your statements, if possible:

2.3 Public procurement processes (tendering) perceptions

No.	Statement	Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree
3C1	Public Sector vigorous procurement processes delays service delivery					
3C2	Public sector procurement processes are clearly defined by OCPO for implementation					
3C3	Politicians use public sector procurement to give tenders to their elites					
3C4	The three bid committee system delays the service delivery					
3C5	There is no relationship between service delivery, procurement planning and budgeting					

Please qualify your statements, if possible:

2.4 Public procurement legislation fraud challenges

No.	Statement	Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree
4C1	Training on ethics and moral values can decrease public procurement fraud					
4C2	Political interference in public procurement increases fraud					
4C3	Conflict of interest in public procurement lead to fraud					
4C4	Poor risk management strategies in public procurement lead to fraud					
4C5	Good governance principles reduce fraud					

Please qualify your statements, if possible:

2.5 Public procurement practitioner training on legislation challenges

No.	Statement	Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree
5C1	Public sector procurement practitioners prefer the “know-how” skills development training than an accredited training					
5C2	Suitable training on public sector procurement legislation to the role-players will improve service delivery					
5C3	OCPO provides adequate training to public sector procurement practitioners					
5C4	Training providers on public sector procurement legislation are properly accredited with the relevant SETA					
5C5	Training material on public sector procurement legislation reflects the current and updated legislation					
5C6	Adequate training on public sector procurement legislation lead to unqualified audit opinions					

Please qualify your statements, if possible:

2.6 Public procurement legislation experts challenges

No.	Statement	Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree
6C1	Access to legal expert advice on court cases and guidance from the OCPO is limited					
6C2	Training curricula by tertiary education institutions is relevant to produce high caliber of public sector procurement legislation experts					
6C3	There are lessons to be learned by public sector procurement practitioners from private sector counterparts					
6C4	Legal expert guidance given by the OCPO are sufficient to improve public procurement operations					
6C5	Legal expert guidance and practice notes issued by OCPO consider recent court judgements on public sector procurement					

Please qualify your statements, if possible:

2.7 Public procurement legislation corruption challenges

No.	Statement	Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree
7C1	The lack of transparency in public procurement leads to corruption					
7C2	Public procurement conflict of interest leads to corruption					
7C3	Corruption reduces service delivery					
7C4	High level of irregularities in public procurement lead to corruption					
7C5	Legislation silence in some procurement processes promotes corruption					

Please qualify your statements, if possible:

2.8 Public procurement legislation that promote transformation challenges

No.	Statement	Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree
8C1	Enforcing SARS Act through Tax Clearance Certificates compliance delays service delivery					
8C2	BBBEEA is another form of public sector procurement discrimination					
8C3	There is political will to revise preferential procurement point systems					
8C4	20 or 10 points on 80/20 or 90/10 preferential point systems are sufficient to ensure accelerated socio-economic transformation					
8C5	Using public sector procurement to achieve socio-economic transformation delays service delivery					
8C6	Fronting practices reverse efforts of government transformation agenda					

Please qualify your statements, if possible:

2.9 Too much decentralization of public sector procurement challenges

No.	Statement	Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree
9C1	Decentralization need to be reviewed to accelerate service delivery					
9C2	Public sector institutions are aware of and are utilizing the available transversal contracts					
9C3	Transversal contracting implementation improves service delivery					
9C4	Current public sector procurement legislation prevents full implementation of strategic procurement by government					
9C5	Clean audits translate to best service delivery					
9C6	Removing SCM from CFO will improve SCM performance					

Please qualify your statements, if possible:

2.10 Inadequate monitoring & evaluation of public sector procurement performance operation challenges

No.	Statement	Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree
10C1	There is a proper and fully functional public sector procurement performance monitoring and evaluation strategy					
10C2	There is a need to develop or review the public sector procurement performance monitoring and evaluation strategy					
10C3	Establishment of a specialized National Bid Appeals Tribunal will enhance public sector procurement performance					
10C4	Role of Public Protector in monitoring and evaluation will improve public sector procurement performance					
10C5	Role of OCPO in monitoring and evaluation will improve public sector procurement performance					
10C6	Role of AGSA in monitoring and evaluation will improve public sector procurement performance					

Please qualify your statements, if possible:



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APPENDIX D: INTERVIEW GUIDE

Date: _____

Institution (optional): _____

Interviewee (optional): _____

Capacity: _____

INTRODUCTION

The Respondents' Information Sheet (*Appendix B*) explains the purpose of the study and the role of the respondents. In addition, the aim is to assure the participants' confidentiality and request permission to use a tape recorder on interviews, where possible.

3.1 Public sector procurement legislation on fraud and corruption challenges

No.	Questions
1D1	In your opinion, do you think fraud and corruption delay service delivery? Why?
1D2	What are major public sector fraud and corruption activities prevalent currently?
1D3	Do you think political interference have major role in escalating fraud and corruption? Why?
1D4	Do you think fraud and corruption in public sector procurement is escalating due to weak legislation? Why?
1D5	What type of legislation must be enacted to prevent fraud and corruption? Why?

1D6	Do you think law enforcement and constitutional bodies are doing enough to curb fraud and corruption? Why?
1D7	Which major law enforcement and constitutional bodies you think must act? Why?
1D8	Do you think these bodies have been given sufficient legislative powers? Why?
1D9	What do you think are the reasons for fraud and corruption? Why?
1D10	Do you think those convicted of fraud and corruption get appropriate sentences? Why?
<p><u>Please qualify your statements, if possible:</u></p>	

3.2 Public sector procurement legislation fragmentation challenges

No.	Questions
2D1	Do you believe the public sector procurement regulatory frameworks are too fragmented? Why?
2D2	Do you think public sector procurement legislation fragmentation delays service delivery? Why?
2D3	Do you think there is public sector procurement legislation that needs to be reviewed? Which one and Why?
2D4	Do you think there are procurement processes where legislation is silent? Why?
2D5	Do you think the current public sector procurement legislation is rigid and difficult to implement? Why?
<u>Please qualify your statements, if possible:</u>	

3.3 Public sector procurement processes (tendering) and service delivery challenges

No.	Questions
3D1	Do you think public sector procurement processes are structured appropriately to improve service delivery? Why?
3D2	Do you think the current public sector procurement processes and model need to be reviewed? Why?
3D3	Based on the above, which processes need to be reviewed? Why?
3D4	Do you think procurement fronting is due to uncoordinated procurement processes? Why?
3D5	Do you think non-compliance to public sector procurement processes is due to confused and fragmented public sector procurement legislation? Why?
3D6	Do you think removing SCM from CFO will improve SCM performance? Why?
<u>Please qualify your statements, if possible:</u>	

3.4 Public sector procurement practitioner training on legislation challenges

No.	Questions
4D1	Do you think currently the OCPO is providing sufficient skills workshops on newly issued directives? Why?
4D2	What should be covered on those skills workshops?
4D3	Do you think public sector procurement legislation is seen as fragmented due to lack of training? Why?
4D4	Do you think lack of training and uncoordinated procurement processes lead to poor public sector procurement performance? Why?
4D5	Do you think public sector procurement practitioners need to be trained intensively on fraud, corruption and moral values? Why?
<u>Please qualify your statements, if possible:</u>	

3.5 Transformation through public sector procurement legislation challenges

No.	Questions
5D1	Do you think using public sector procurement as a tool for socio-economic transformation causes confusion and delays in service delivery? e.g. BBBEE, Why?
5D2	Do you believe the exclusion of transformational agenda in public procurement will improve service delivery? Why?
5D3	Do you think the 20 or 10 points in the 80/20 or 90/10 preferential procurement point systems are sufficient to achieve the socio-economic transformation agenda? Why?
5D4	Based on the above, do you think there is political will to review the preferential procurement point system? Why? If yes, to what extent?
5D5	Do you think BBBEE as an effort to achieve socio-economic transformation is a form of public sector procurement discrimination? Why?
<u>Please qualify your statements, if possible:</u>	